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Supreme Court, U.S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-315

DEEPSOUTH PACKING COMPANY, INC.,

Petitioner,

versus

THE LAITRAM CORPORATION,

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI
FILED: August 31, 1971

CERTIORARI GRANTED: January 17, 1972.

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IN THE SUPREME COURT OF THE UNITED STATES

DEEPSOUTH PACKING CO., INC.	:	
Petitioner,	:	
v.	:	No. 71-315
THE LAITRAM CORPORATION,	:	
Respondent,	:	

CHRONOLOGICAL LIST OF BASIC LITIGATION DATES

Date	Event
June 14, 1967	Action commenced by Laitram against Deepsouth for alleged infringement of United States Patents 2,694,218 ("'218 patent") and 2,825,927 ("'927 patent").
December 29, 1967	Defendant's Motion to Amend Answer To Assert Antitrust Counterclaim Denied (Honorable Alvin B. Rubin, D.J.)* (opinion reported at 279 F.Supp.883).
March 28, 1968	Pre-trial conference; Pre-trial Order entered.

*Judge Rubin acted as the District Court in all proceedings connected with this action.

IN THE SUPREME COURT OF THE UNITED STATES

DEERSKOUTH PACKING CO., INC., Petitioner, v. THE LAITRAM CORPORATION, Respondent.	No. 71-315

CHRONOLOGICAL LIST OF RADIO EDITORIAL DATES

Date	Event
June 14, 1967	Action commenced by Laitram against Deerskouth for alleged infringement of United States Patents 2,894,218 ("'218 patent") and 2,825,927 ("'927 patent").
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March 26, 1969	Pre-trial conference; Pre-trial Order entered.

"Judge Rubin acted as the District Court in all proceedings connected with this action.

April 22, 1968- April 25, 1968	First four days of trial on validity, infringement and enforceability.
May 23, 1968- May 25, 1968	Last three days of trial on validity, infringement and enforceability.
August 8, 1968	Oral argument on validity, infringement and enforceability before District Court after filing of opening brief by plaintiff, answering brief by defendant and reply brief by plaintiff.
November 15, 1968	Final brief on validity, infringement and enforceability filed by Deepsouth.
November 25, 1968	Final brief on validity, infringement and enforceability filed by Laitram.
December 11, 1968	Both parties file Proposed Findings of Fact.
April 7, 1969	District Court's opinion filed holding Claim 3 of the '218 patent valid, infringed by and enforceable against Deepsouth; thirteen other asserted claims of the two patents held to either non-infringement or invalid.
June 16, 1969	District Court's Findings of Fact filed.

April 22, 1968- April 25, 1968	First four days of trial on validity, infringement and enforceability.
May 23, 1968- May 25, 1968	Last three days of trial on validity, infringement and enforceability.
August 8, 1968	Oral argument on validity, infringement and enforceability before District Court after filing of opening brief by plaintiff, answering brief by defendant and reply brief by plaintiff.
November 15, 1968	Final brief on validity, infringement and enforceability filed by Deepsouth.
November 25, 1968	Final brief on validity, infringement and enforceability filed by Laitram.
December 11, 1968	Both parties file Proposed Findings of Fact.
April 7, 1969	District Court's opinion filed holding Claim 3 of the '218 patent valid, infringed by and enforceable against Deepsouth; thirteen other asserted claims of the two patents held to either non-infringement or invalid.
June 16, 1969	District Court's Findings of Fact filed.

June 30, 1969	Judgment entered and writ of injunction issued enjoining further infringement.
July 30, 1969	Notice of Appeal from judgment as to patent validity, infringement and enforceability entered June 30, 1969 filed by Deepsouth.**
December 3, 1969	District Court held Skrmetta Machinary Corporation bound by writ of injunction.
January 23, 1970	Deepsouth's Motion to Modify Injunction to permit foreign (Brazilian "kit form" shipment filed.
February 25, 1970	Hearing before District Court on Defendant's Motion to Modify Injunction to permit foreign (Brazilian "kit form" shipment, and deposition of Defendant's President Raphael Q. Skrmetta relevant thereto taken and Affidavit of Mr. Skrmetta filed.
March 10, 1970	District Court's Opinion approving foreign (Brazilian) "kit form" deveiner shipment filed.

** The decision of the District Court was affirmed by the Fifth Circuit Court of Appeals and certification was devised by this Court as to the issues raised by these decisions.

June 30, 1969 — Judgment entered and writ of injunction issued enjoining further infringement.

July 30, 1969 — Notice of Appeal from judgment de to patent validity, infringement and enforceability entered June 30, 1969 filed by Deepsouth.**

December 3, 1969 — District Court held Bermuda Machinery Corporation bound by writ of injunction.

January 23, 1970 — Deepsouth's Motion to Modify Injunction to permit foreign (Brazilian "Kit form" shipment filed.

February 25, 1970 — Hearing before District Court on Defendant's Motion to Modify Injunction to permit foreign (Brazilian "Kit form" shipment, and deposition of Defendant's President Raphael D. Bermuda relevant thereto taken and Affidavit of Mr. Bermuda filed.

March 10, 1970 — District Court's Opinion approving foreign (Brazilian) "Kit form" deVilbiss shipment filed.

** The decision of the District Court was affirmed by the Fifth Circuit Court of Appeals and certification was denied by this Court as to the issues raised by these decisions.

March 23, 1970	District Court's Order entered denying Laitram's suggestion that foreign (Brazilian) "kit form" sale is violative of injunction and certifying question for immediate appeal.
March 24, 1970	Laitram files Petition for Permission to Appeal from Order of March 23, 1970 under 28 U.S.C. §1292(b).
May 12, 1970	Court of Appeals grants leave to Laitram to appeal from Order of March 23 and consolidates appeals for argument.
June 24, 1970	Oral argument in Jacksonville, Florida before Court of Appeals.
May 26, 1971	Opinions filed by Court of Appeals reversing the District Court's approval of foreign (Brazilian) "kit form" shipment and affirming judgment on validity, infringement and enforceability.
August 31, 1971	Petition for Writ of Certiorari filed by Deepsouth to review both decisions.

March 23, 1970	District Court's Order entered denying Laitram's suggestion that foreign (Brazilian) "kit form" sale is violative of injunction and certifying question for immediate appeal.
March 24, 1970	Laitram files Petition for Permission to Appeal from Order of March 23, 1970 under 28 U.S.C. §1292(b).
May 12, 1970	Court of Appeals grants leave to Laitram to appeal from Order of March 23 and consolidates appeals for argument.
June 24, 1970	Oral argument in Jacksonville, Florida before Court of Appeals.
May 26, 1971	Opinions filed by Court of Appeals reversing the District Court's approval of foreign (Brazilian) "kit form" shipment and affirming judgment on validity, infringement and enforceability.
August 31, 1971	Petition for Writ of Certiorari filed by Deepsouth to review both decisions.

January 17, 1972

Petition for Writ of Certiorari granted, limited to Question 1 presented by the Petition, viz. whether the foreign (Brazilian) "kit form" shipment constitutes infringement of the two U.S. patents in suit.

January 17, 1972

Petition for Writ of Certiorari granted, limited to Question 1 presented by the Petition, viz. Whether the foreign (Brazilian) "kit form" shipment constitutes infringement of the two U.S. patents in suit.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

* *

THE LAITRAM CORPORATION, * CIVIL ACTION

Plaintiff * NO. 67-861

versus *

DEEPSOUTH PACKING CO., INC., * SECTION "C"

* *

PORTIONS OF FINDINGS OF FACT, DATED JUNE 12, 1969

* * * * * * * * * * *

BACKGROUND FACTS

1. The inventions of the patents in suit are concerned with shrimp deveining. Deveining or shrimp involves the removal of the shrimp's abdominal tract imbedded in the back of the shrimp; this tract is known as the "vein", "back strip," "sand bag," "sand vein", "black line" or "line."

2. Shrimp canners began to devein shrimp commercially in the 1930's by the use of hand tools, such as knives or similar devices manipulated by unskilled or semi-skilled employees, usually female.

3. Since 1941, the designation "cleaned" or "deveined" has been used commercially to describe shrimp from which the vein has been removed at least up to the last segment next to the tail. The designation is of considerable commercial value to the firms that devein shrimp.

4. As labor costs increased, it became progressively more expensive to devein shrimp by hand. These costs increased again in 1961 when the Fair Labor Standards Act minimum wage was extended to cover employees in the shrimp industry.

5. Commencing in the 1940's, a number of entrepreneurs attempted to develop various types of machines for deveining shrimp. These machines had limitations, however, and were never fully accepted commercially. Some required hand or individual placement of shrimp in the machine; some required the shrimp to be positioned in a certain manner; some required adjustments to take varying sizes of shrimp. These machines generally used moving parts, such as circular saws or knives, and had a tendency to damage small shrimp.

6. The machinery offered to the industry included the McKinstry machine (also known as the Alvarez, Brock or Seafood Equipment machine), the Greiner machine, the Kroeger (or Coulter) machine and the Envoldsen machine. Some of this machinery was tried out by various shrimp canners but with unsatisfactory results when used for quantity deveining needs and for deveining

of smaller shrimp.

7. In 1952, Fernand and James Lapeyre, two partners in Peelers, who, along with Fernand's brother Emile, had previously invented machinery for peeling shrimp automatically, began to work toward the development of shrimp deveining machinery that would be commercially acceptable to the shrimp canning industry.

8. The Lapeyres commenced experimenting in Fernand's garage in New Orleans.

9. In the course of their experimental work, the Lapeyres recognized the significance of two properties of a shrimp:

(a) As a result of its curved shape, and the distribution of its weight, a shrimp tends to slide down an inclined surface flat on its side, with its back down.

(b) A cut made along the back of a shrimp tends to expose its vein even if the cut is not made precisely in the center of the shrimp's back.

10. The Lapeyres then set out to develop a structure that would utilize these characteristics of the shrimp. They built an inclined trough whose surface was lubricated by water from a garden hose placed at its upper end, with razor blades positioned end to end in the trough and above its surface to encounter the shrimp as they descended down the trough and shunt them from blade to blade a sufficient number of times to cut the back and expose the vein. The force of gravity propelled the shrimp against the blades with sufficient momentum to make the cut. The ultimate commercial embodiment became known as the "slitter" or "slitter trough."

11. The Lapeyres also recognized that the greater number of times a shrimp's back was exposed to the blades, the greater would be the mathematical probability that the back would be cut at all places where the vein is near the surface.

12. On August 19, 1952, they filed an application for a patent. This application was initially rejected by the Patent Examiner because she did not think the machine would work. In addition,

various claims were rejected as indefinite, aggregative, and previously disclosed by the prior art. However, on November 16, 1954, patent number 2,694, 218 was issued.

13. The Lapeyres then built a less crude version of the device. In mid-August 1953, experimental commercial use of this machine began at the Grand Caillou Packing Company, a shrimp processing plant located on Bayou Grand Caillou in Dulac, Louisiana.

14. Although in many cases the water action and the interaction of the water and blades washed the veins free from the "slit" shrimp, the operation of both the earlier experimental model and this machine convinced the Lapeyres that additional vein removal machinery was necessary to obtain a satisfactory commercial deveining job.

15. The Lapeyres then turned to the problem of achieving commercially acceptable vein removal from shrimp whose backs had previously been slit. Aside from hand operation, prior attempts by others at shrimp vein removal had involved either gouging or sawing out the vein longitudinally as a continuation or part of the back-slitting operation or boiling or soaking the slit shrimp in blanching tanks.

16. After trying methods similar to these previously used, the Lapeyres decided that the proper way to approach the problem would be to devise a mechanical device that would engage and wedge the vein transversely, and thus forcibly pull it from the shrimp.

17. They conceived of a drum-like structure bearing interior projections to engage or hook and then wedge and pull the vein; this method differed from mechanical methods previously used, in which the motion was longitudinal to the shrimp and not transverse.

18. In a catalogue of the Harrington & King Perforating Company of Chicago, Illinois, they found a stamped material that they thought would serve their purpose. They built a drum-like device incorporating this material, positioning the drum so that it would rotate, slightly inclined from the horizontal, in a small bath of water with a cleansing water spray overhead. In operation, this device removed veins from shrimp in a satisfactory manner.

The commercial embodiment became known as the "Laitram"

19. On July 8, 1954, they filed an application for a patent. This application issued as patent number 2,829,677 on August 8, 1957.

20. In mid-1954, machinery incorporating the inventions of the '219 and '927 patents were offered to the shrimp industry.

21. This offer was made in the middle of a big shrimp season. Before the following spring, the beginning of the next shrimp season, nearly 50% of the available market in the shrimp canning segment of the industry was using the machinery.

22. The shrimp machinery incorporating the inventions of the patents in suit has had substantial commercial success in the shrimp canning industry and with shrimp processors who devein shrimp for sale other than canning, but some of these processors still employ hand tools deveining because they consider the hand deveined shrimp superior in quality and find that less weight is lost in the deveining process.

23. The Laitram machinery was the first to achieve the following results:

(a) It replaces large numbers of workers.

(b) It handles smaller sizes of shrimp than could previously be handled economically.

(c) It can devein many sizes of shrimp without pre-grading.

(d) It produces a yield from smaller sizes of shrimp comparable to that obtained by hand deveining.

(e) It has a high capacity.

(f) It requires no manual assistance either to feed shrimp into the machine or remove them from it.

(g) Its capacity is predictable.

(h) It can handle masses of shrimp simultaneously and continuously.

24. Insofar as any items in this action is concerned, all devaining machinery manufactured and leased to the shrimp industry by Laitram has been identically all "slitters" have incorporated inventions of the '218 patent and all "tumblers" have incorporated inventions of the '927 patent; all such machinery has had placed upon it the proper statutory notice indicating it was embraced by the patents in suit. Any reference to Laitram devaining machinery herein means the machinery incorporating inventions of these patents.

25. Until Deepsouth's sales activities began, about 11 years after the introduction of the Lapeyre devaining machinery, no question was raised in the shrimp industry concerning the validity of these patents.

26. Laitram currently licenses the use of the '218 and '927 inventions by way of lease. Forty-four units of its devaining machinery (each unit including a "slitter" and a "tumbler" embodying the inventions of the patents in suit) were being leased when this action began.

27. When the accused Deepsouth machinery was introduced to the canning market, the operating advantages and substantial benefits resulting from the use of the Lapeyre inventions had already been recognized by the shrimp canning industry.

28. Deepsouth had actual knowledge of the patents in suit within a year after their issuance. Deepsouth's president was the president and sole owner of a corporation that was the second lessee of Laitram devaining machinery; this lease was signed three weeks after the first offer of the machinery.

29. Deepsouth sold its first Model DV 4656 "Shrimp Deveiner" on March 22, 1965.

30. The first vein removal apparatus Deepsouth offered and sold to the industry incorporated an endless "Cyclone" wire mesh belt. Deepsouth's customers were not satisfied with the results achieved by this initial apparatus, and defendant changed its construction to the device accused in this action, a punched-lip-perforated endless belt. The "Cyclone" wire mesh belt has

never been charged with infringement. Defendant changed its construction both because the "Cyclone" knit was difficult to clean, and also because its customers were dissatisfied with the vein removal efficiency of the wire mesh knit.

31. All "slitters" and [illegible] knitless knit veiner removers manufactured and sold by Defendant have been identical insofar as any issue in this action is concerned.

32. On the day prior to commencement of the trial, the court witnessed demonstrations of Laitram machinery and the accused Deepsouth machinery (including the "Cyclone" mesh belt device described in Finding 32 supra), as well as the operation of certain devices constructed under the direction of Defendant's trial counsel as replicas of disclosures of certain prior art patents asserted to render the '218 patent invalid.

33. Motion pictures of the operation of the Laitram slitter and the Deepsouth slitter taken in the presence of defendant's president and defendant's trial counsel were viewed three times during the course of trial.

34. During the trial, the court examined in the courtroom certain deveining machinery offered to the industry before the Laitram machinery, namely the Meriwether, Greiner and Envoldsen machines.

III. VALIDITY OF THE '218 PATENT

3. A machine embodying the disclosure of the McKinstry patent (otherwise known as the Ayatta, Brock or Seafood Equipment machine) was present in the courtroom through much of the trial. McKinstry is not supportive of the individual elements or the structure, mode of operation, or results of the '218 patent; it does not anticipate claim 3 or any other claim of the '218 patent.

5. The new combinations found in the claims of the '218 patent disclose a new structure, a new mode of operation and new, beneficial and useful results in shrimp deveining. The elements

of these combinations are so arranged and cooperate in such a manner as to function differently from the prior art, and they do more than merely replace labor.

6. The invention of the '218 patent is a radical departure from the prior art and the differences between the subject matter claimed by the '218 patent and the prior art are clearly not such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

7. The '218 patent is a basic and pioneer patent that revolutionized structures, operations and results in quantity shrimp deveining.

8. Defendant also contends that, if the claims asserted against the accused Deepsouth structure are construed to embrace that structure, they are invalid as being broad and indefinite. But the asserted claims of the '218 patent are sufficiently definite and meet the requirements of both the patent statutes and the Constitution.

IV. LITERAL INFRINGEMENT OF THE '218 PATENT

* * * * * * *

-11-

2. The Deepsouth slitter comprises an inclined trough incorporating five pairs of longitudinally placed knives spaced above the trough and supported along their length, each knife in each pair being opposed (or parallel) to the other. There are thus five separate channels (or paths), each formed by opposing knives, down which the shrimp pass. The trough is adapted to rock about a longitudinal axis by means of a motor-driven crank arm attached to the underside of the trough. By a pipe disposed across the

upper end and spaced above the surface of the trough, water is supplied to the trough at its upper end prior to the point where shrimp are deposited on the trough. The pipe is perforated with small holes that are adapted to deliver water under pressure in a downwardly direction to the trough.

3. In the operation of the beheaded slitter, peeled deheaded shrimp are delivered to the inclined trough at its upper end by a conveyor belt, and distributed to the various channels (or paths) of the slitter by means of a fan shaped spreader baffle. The knives form a path for the shrimp, and, as the slitter rocks, the shrimp are shunted from side to side. As each shrimp proceeds down the trough, it is in a position diagonal to the knives as it departs from and approaches a knife, and parallel to the knives as it slides along a knife. The backs of the shrimp are slit as they strike the knives.

V. INFRINGEMENT OF THE '218 PATENT UNDER THE DOCTRINE OF EQUIVALENTS

2. A pioneer patent is entitled to a broader range of equivalents than a mere run of the mill improvement patent. The '218 patent is therefore entitled to a full range of equivalents.

11. Defendant contends that certain apparent structural and operational characteristics of the Deepsouth slitter result in a significantly different mode of operation and produce different results. Neither centrifugal force nor momentum, however, is a significant force in the operation of the machine. Gravity is the only significant force operative in both slitters. The role and effect of these other two forces is insignificant compared with the role and effect of gravity.

12. While viewing the Laitram and Deepsouth slitters in operation, and again while viewing the motion picture, the court noticed the following differences in the mode of operation of the two machines:

(a) Shrimp impacted against the knives a greater number of times in defendant's slitter than in plaintiff's slitter.

(b) Shrimp appeared to remain against the knives for a longer period of time in defendant's slitter than in plaintiff's slitter.

(c) Shrimp travelling down the trough appeared to bounce off and roll along the knives somewhat less in defendant's slitter than in plaintiff's slitter.

(d) The water in defendant's slitter flowed from slitting channel to slitting channel underneath the knives, whereas the water in plaintiff's slitter was generally confined to one slitting channel due to the fact that the knife holders in plaintiff's slitter were continuous under each knife.

(e) In defendant's slitter, the shrimp travel a path in which the angle of the horisontal movement is less acute than the angle of the vertical movement, i.e., a path that could be depicted as virtually "S" shaped, whereas the shrimp in plaintiff's machine travel a path at which the angles of movement are less differentiated.

(f) Because the number of rocking motions of defendant's trough is greater than the number of diagonally opposed blades in plaintiff's device, a greater number of knife hits is obtained by defendant's slitter than with a Laitram trough of the same length for each shrimp that slides down the respective troughs.

(g) The ability of water to pass under defendant's blades avoids both the formation (and the function) of plaintiff's "cascade." The cascade has undesirable cushioning effects, but this is negligible in its interference with the function of plaintiff's device.

13. These differences are not significant functionally, and they do not derogate from the substantial similarity of the mode of operation of the two slitters. They are therefore considered to be of relatively little significance on the issue of infringement under the doctrine of equivalents.

14. As the legal opinion accompanying these Findings points out, "Essentially, plaintiff has patented a device in which shrimp slide down a trough hitting knives at an angle so that their backs are slit and their veins are exposed. Defendant's slitter operates on the same basic principles, performs the same function and achieves the same result."

15. Hence the elements, structure, functions, and mode

of operation of the Deggeroth slitter are equivalent and its elements coact in substantially the same way as both the device claimed by the '218 patent and the Lattrum commercial slitter.

16. The results achieved by the Deggeroth slitter are substantially the same as those achieved by the Lattrum slitter. When shrimp leave each slitter, they are slit along their backs; each slitter fully deveins some of the shrimp. So far as could be determined from visual inspection, the shrimp leaving the two machines are indistinguishable.

17. While defendant's slitter is covered by U.S. Patent No. 3,031,714, and was found patentable by the Examiner over the disclosure of the '218 patent, the court finds that it is the equivalent of the slitter disclosed by the '218 patent. The elements, structure, function, modes of operation, and results are not different in any material respect.

VI. FILE WRAPPER ESTOPPEL

VII. VALIDITY OF THE '927 PATENT

2. Defendant asserts that United States Patent 71,434, a patent issued November 26, 1867 to Napoleon Bonaparte White for an Improved Machine for Binding Wire, anticipates every claim of the '927 patent. In furtherance of this assertion, defendant constructed a device as a replica of the device in the White patent, and demonstrated to the court. Similarly, in furtherance of its assertions as to Vuoncovich 2,111,888, defendant constructed and demonstrated a device as a replica of the Vuoncovich patent.

3. Neither White nor Vuoncovich, however, discloses the combination of elements and element co-action found in the '927 patent, and neither of them anticipates the '927 patent.

4. Defendant also asserts that claims 1, 12, 13, 14, 15 and 18 of the '927 patent are anticipated by Miller 2,000,000. Miller was cited by the Patent Examiner to show "the state of the art," but was not applied to show either anticipation or obviousness; the Patent Examiner considered and rejected the Miller patent as a reference. Miller does not teach or disclose the subject matter claimed in Claims 1, 12, 13, 14, 15 and 18, and it does not anticipate these claims.

5. Defendant further relies upon Vuoncovich 2,338,485; Avetta 2,625,705 and Avetta 2,626,761 as anticipating one or more claims of the '927 patent. None of these teaches or discloses the inventions of the '927 patent; none anticipates the '927 patent.

6. The inventions of the '927 patent were not anticipated by hand devaining practices.

7. Defendant further contends that the '927 patent is invalid pursuant to 35 U.S.C. Section 103 because it is "obvious." Defendant relies principally on combinations of one or more of the disclosures of White; Vucassovich 2,331,855; Macklett 565,999 and Rell 1,028,736. Vucassovich 2,331,855 was cited and relied upon by the Examiner. White was in a patent sub-class searched by the Examiner when he made his search on the '927 application; it is concluded that the Examiner reviewed White and discarded it. White, Macklett and Rell are no more pertinent than the other patents referred to or cited by the Examiner during the prosecution of the application resulting in the '927 patent. None of those patents, singly or in combination with one or more of the others, suggests or renders obvious the combination of the elements of the '927 patent and the cooperative relationship covered by it.

8. During the course of this action, defendant has at one time or another cited and/or relied upon the following patents with respect to its defense of obviousness of the '927 patent: White 71,436; McCabe 161,425; Baker 430,372; Tobin 493,454; Mackett 565,999; Meredith 837,884; Lafrentz 916,725; Svobda 925,527; Rell 1,028,736; Luer 1,210,959; Mellington 1,310,662; Sprague 1,383,162; Bukham 1,475,929; Price 1,615,134; Davis 1,620,953; Gallison 1,692,984; Chandler 1,715,991; Horstmann 1,737,087; Randall 1,781,301; Lehman 1,811,017; Bottker 2,034,691; Dorment 2,052,548; Krull 2,301,729; Vucassovich 2,331,855; Vucassovich 2,355,405; Hendrickson 2,380,755; Caston 2,518,448; Watson 2,528,402; Rite 2,537,836; Ose 2,540,990; Riha 2,541,781; Abbott 2,546,414; Envoldsen 2,622,270; Avetta 2,625,705; Avetta 2,626,701; Lapeyre 2,637,065; Gardes 2,637,074; Clements 2,641,020; Harris 2,652,588; Kaplan 2,653,345; Greiner 2,663,898; Streich 2,685,705;

Jonsson 2,784,450; Kelly Re. 14,467; Holsbeck 324,397 (France); Jacobson 643,383 (France); Patterson 475,307 (Germany) and Peterson 58,120 (Norway). None of these patents, singly or in combination with one or more of the others, teaches, discloses, suggests or renders obvious the combination of elements of the patent and their cooperative relationship. In view of the fact that the invention is uncomplimated, the very number of patents cited by defendant indicates that it was not obvious.

9. The patents listed above that were not cited by the Patent Office during the prosecution of the '927 patent are no more pertinent than those that were cited during such prosecution. Plaintiff's invention was neither anticipated nor obvious.

10. The new combination claimed by the '927 patent discloses a new structure, a new mode of operation and new, beneficial and useful results in shrimp deveining and the elements of these combinations are so arranged and so cooperate as to function differently and do more than merely replace labor. The '927 patent discloses a valid combination.

VII. INFRINGEMENT OF THE '927 PATENT

10. During the viewing of the Laitram and Deepsouth vein removers in operation, the court noticed the following visual differences in the mode of operation of the two machines:

(1) there appeared to be more water utilized in the plaintiff's machine than in the defendant's;

(2) the speed of travel of defendant's endless belt was greater than that of plaintiff's drum, and shrimp remained on the belt a shorter period of time.

11. These noticed differences do not derogate from the substantial similarity of the mode of operation of the two vein removers and are considered to be of relatively little significance on the issue of infringement.

12. The witnesses called by the parties differed as to the relative amount of stubble and subsequent loss in yield as between the Latrom and Sequoth developments, the tests conducted did not yield results substantially different to be persuasive.

13. While defendant contends that its weh remover apparatus also operates as a conveyor, the difference in this regard from the plaintiff's developer, the court finds that both plaintiff's and defendant's weh removers operate as conveyors, and that there is no functional difference in this respect.

II. UNENFORCEABILITY

1. Defendant contends that both the '218 and the '827 patents are unenforceable by reason of (a) laches on the part of Laitram; (b) estoppel arising in favor of Deepsouth because of its reliance on the actions or inaction of Laitram. Defendant urges therefore that plaintiff is precluded from monetary recovery for past infringement.

2. At some time in early or mid-1963, Peelers' service coordinator, while on a regular trip to certain Texas plants where Peelers' shrimp processing machinery was located, saw a "rocking" slitter at Aransas Seafood Company in Aransas Pass, Texas. Peelers' management knew that the manager of that plant was Paul C. Skrmetta, father of defendant's president, Raphael O. Skrmetta. The sighting was reported to Peelers' management and was the first knowledge it had received of the existence of any deveining machinery apparently similar to its own. When the same employee made a subsequent trip to this plant, he did not see the "rocking" slitter. Also in 1963, a "rocking" slitter similar to the one seen at Aransas Seafood was seen by a serviceman of Peelers in the Morgan Daniels shrimp plant at Corpus Christi, Texas.

3. Paul C. Skrmetta was engaged in the development of shrimp deveining machinery at his seafood plant, Skrmetta Seafood Company, on Broad Street in New Orleans in 1956 and 1957. There was testimony that, at some time in mid-1957, a comparative test was held in the Deepsouth plant to compare results obtained by the Peelers' slitter with results obtained by an experimental

"rocking" slitter constructed by Paul C. Skewith in his plant. This test was decided very unfavorably. Information about this test at the instance of a foreign citizen at the Sweet Street plant did not come to the attention of Deitrex management until after this suit was filed.

4. In 1958, Paul C. Skewith and Raphael G. Skewith filed an application for a patent on a skiving developer. A patent was issued to the Skewiths on May 1, 1962, and was apparently described and explained in the patent and a "working" slitter very much like the "rocking" slitter [illegible] in this device. Various employees became aware of the existence of this patent shortly after its issuance.

5. Hunt Foods, a firm that does a substantial amount of skiving, approached Deepcouth [illegible] 1964, indicating a desire that equipment furnished by Deepcouth be "perfected" so that it, as a prospective [illegible] Deepcouth to get a commitment from Leitrim as [illegible] with respect to its patents. A series of [illegible] to Leitrim and Hunt by Deepcouth to [illegible] being dispatched to Leitrim, and further advice [illegible] Hunt Foods by Deepcouth before a [illegible] addressed to Leitrim.

7. In mid-October, 1964, Leitrim received a letter from Deepcouth announcing that Deepcouth had "developed" a developing machine and was "preparing to offer it to Skiving Owners and Processors." Leitrim replied, indicating that (a) it had no legal remedy for inspecting or (b) its consent would responsibility for Deepcouth's conduct and (c) it was a settled policy to take proper steps when its patent rights were invaded.

8. Deepcouth then commenced the manufacture and sale

of deveining machinery. In making its decision to do so, its major interest was to find a profitable market. However, it did consider Laitram's refusal to inspect Deepsouth's machine, and it relied upon this to some extent, believing that the actions taken would favorably influence the outcome of litigation if a patent infringement suit ensued.

9. But Deepsouth could not reasonably believe that it would not be sued for patent infringement.

10. In mid-May, 1965, a Laitram serviceman, while on a regular visit to service Laitram machinery in the Hunt Foods plant at Harvey, Louisiana, noticed deveining machinery bearing a Deepsouth nameplate.

11. A short time later, in late June or early July, 1965, another Laitram serviceman, while on a regular service visit to a plant at Dulac, Louisiana, where Deepsouth deveining machinery had been noticed a month earlier, saw that a punched lip-perforated endless belt had replaced the "Cyclone" wire mesh endless belt as the shrimp vein removal apparatus (the third unit) of the Deepsouth deveining machinery. This was the first knowledge Laitram had of any Deepsouth punched lip vein removal apparatus.

12. Deepsouth offered some evidence in support of its allegation that it had been prejudiced by the Laitram's failure to accept its offer to inspect its "rocking" slitter. This evidence consisted of estimates, unsupported by invoices, receipts or cancelled checks; these estimates related to "off the shelf" items, some of which were used only on second and third units of its machinery, the "jet washer" and the fingernail belt. There was no evidence of capital investment in plant; no evidence of purchase of machinery other than a few small hand tools;

and no evidence of substantial advertising.

15. The facts as summarized, show the following:

(a) Fenlers knew of the "rocking" clitter patent in 1962.

(b) Fenlers first knew of a machine employing the "rocking" clitter principle in 1963; the "rocking" clitters installed [illegible] employees then now were not manufactured, used or sold by Deepcouth but had been made with Deepcouth's assistance and information.

(c) Laitrum first learned of Deepcouth's use of a punched lip fingernail belt as a devaining device in 1965.

14. Laitrum asserted its patent rights within a reasonable period of time. The time that elapsed after it became aware of the Deepcouth devices was not enough to induce Deepcouth to believe that Laitrum had abandoned its patents or considered its patent rights to be worthless. Laitrum did not acquiesce in any of Deepcouth's activities.

15. Considering the prior relations of the parties, Laitrum should have inspected the Deepcouth machines when offered an opportunity to do so, but Deepcouth could not reasonably have relied on this failure, and Laitrum is not estopped to assert its rights merely because of it.

16. Deepcouth did not show any significant investment in plant or equipment relating to manufacture of devaining machinery made as a result of Laitrum's conduct, and thus did not show any damage or prejudice to itself resulting from Laitrum's

17. The '218 and '827 patents are enforceable against Defendant.

New Orleans, Louisiana
June 13, 1969

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE LAITRAM CORPORATION, * CIVIL ACTION
Plaintiff * NO. 67-861
versus *
DEEPSOUTH PACKING CO., INC., * SECTION "C"
Defendant *

Lewis H. Eslinger, Esq.
New York, N.Y.
Attorney for Plaintiff

Guy W. Shoup, Esq.
New York, N.Y.
Attorney for Plaintiff

Louis B. Claverie, Esq.
New Orleans, La.
Attorney for Plaintiff

Harold J. Birch, Esq.
Washington, D.C.
Attorney for Defendant

C. Emmett Pugh, Esq.
New Orleans, La.
Attorney for Defendant

OPINION OF DISTRICT COURT
DATED APRIL 7, 1969.

RUBIN, District Judge:

Brevity may be wit's soul but it is no part of patent litigation. This case is proof enough. It involves two patents for use in deveining shrimp. Disregarding scriptural advice, 1/ and assisted no doubt by the ease with which dictating machines, electric typewriters, and electrostatic reproduction processes produce paper work in volume, counsel have favored the Court with a total of over 500 pages of briefs and memoranda.

They have submitted pre-trial memoranda, trial briefs, post trial briefs, reply memoranda, second reply memoranda and even a reply to a memorandum in opposition to a "Memorandum In Reply To Defendant's Memorandum In Opposition To Post-Argument Memorandum of Plaintiff." In doing so, they have not overlooked any issue that might conceivably be drawn into an infringement suit or its defense. Doubtless they have been stimulated by pedagogic duty in their attempts to educate a court unlettered in

patent law. But the educational process has been difficult for the student as well as lengthy for the tutor, and it remains to be seen whether the lessons has been well learned. 2/

Shrimp, whether boiled, broiled, barbecued or fried, are a gustatory delight, but they did not evolve to satisfy man's palate. Like other crustaceans, they wear their skeletons outside their bodies in order to shield their savory pink and white flesh against predators, including man. They also carry their intestines, commonly called veins, in bags (or sand bags) that run the length of their bodies. For shrimp to be edible, it is necessary to remove their shells. In addition, if the vein is removed, shrimp become more pleasing to the fastidious as well as more palatable. Until recent years, these peeling and deveining operations had always been performed by hand or with simple tools.

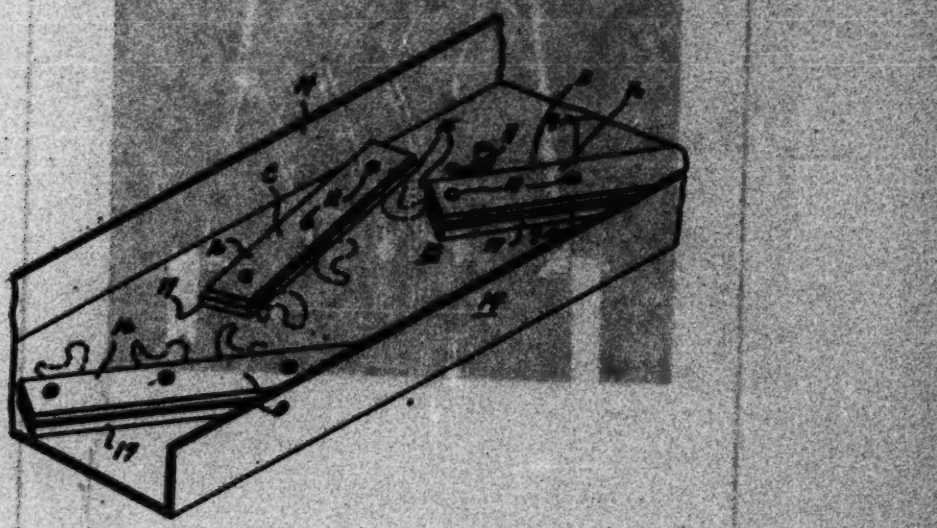
The Lapeyres, Fernand and James, who are assignors of the plaintiff, set out to solve the peeling problem. They succeeded in doing so, but the Skrmettas, father Paul and son Raphael, a family engaged in the shrimp business, developed a competing device. In a lengthy infringement suit, whose story has been told elsewhere, 3/ the patent problems relating to the shrimp peeler were disposed of.

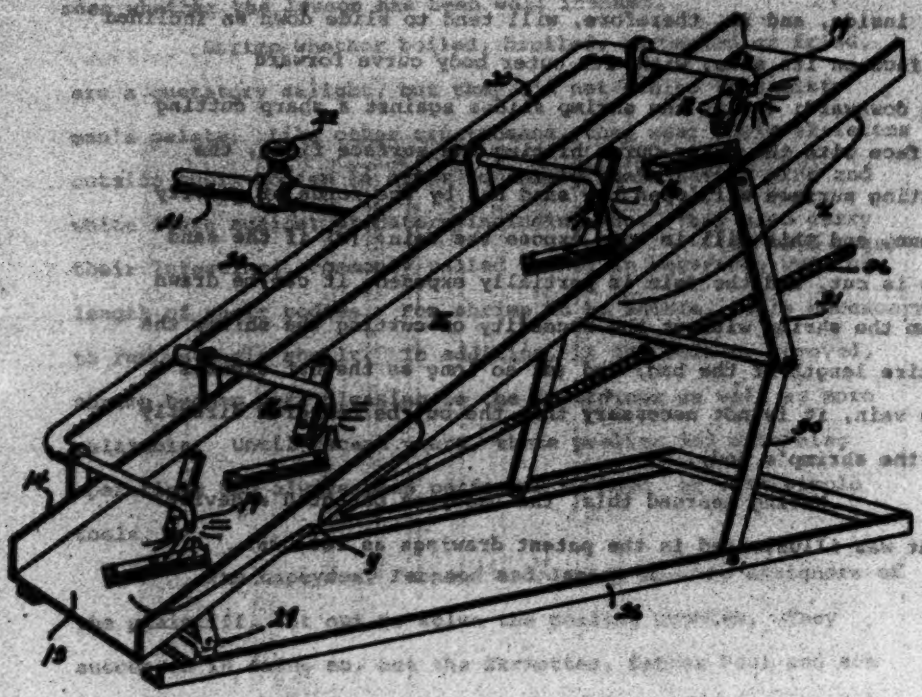
The machine that peeled the shrimp, however, left their veins intact. As labor costs increased, it became economically desirable to find both a less expensive way to devein large shrimp and a way to devein the medium sized shrimp that were then being processed without deveining. The Lapeyres, therefore, decided to invent a machine that would do this.

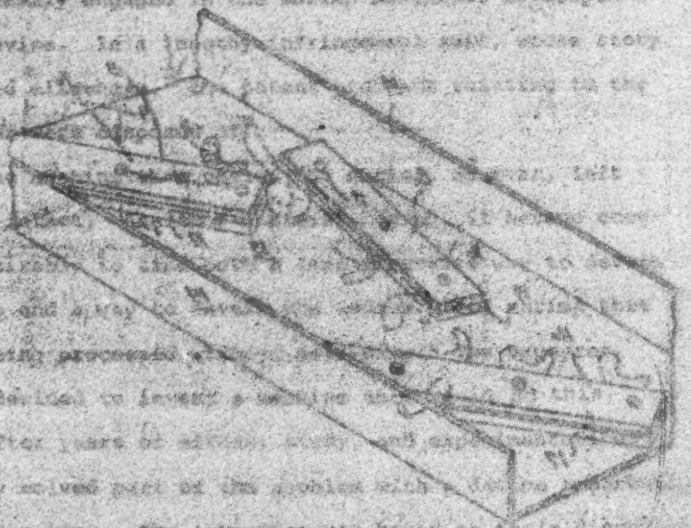
After years of effort, study, and experimentation, they finally solved part of the problem with a device remarkably simple in operation. The invention was based on their discovery of facts that, once learned, appear obvious. These facts, and their relationship to deveining shrimp, however, had eluded all others. They consisted of nothing more than the observations

that, (a) since the body of a shrimp is curved and cylindrical in shape and the heavier mass is on the outside of the curve, the center of gravity on its body is nearer the outside curve than the inside, and it, therefore, will tend to slide down an inclined surface on its side, with its outer body curve forward and downward; (b) if the shrimp slides against a sharp cutting surface with the outer curve leading the surface first, the cutting surface will open the meat bag by the force of gravity alone, and this will in many cases tear the outer (a) if the meat bag is cut, and the vein is partially exposed, it can be drawn from the shrimp without the necessity of cutting the shrimp the entire length of the bag; and (d) so long as the cut exposes the vein, it is not necessary that the cut be continued directly on the shrimp's body.

Having learned this, the Laggyeon patented a device that was illustrated in the patent drawings as follows:

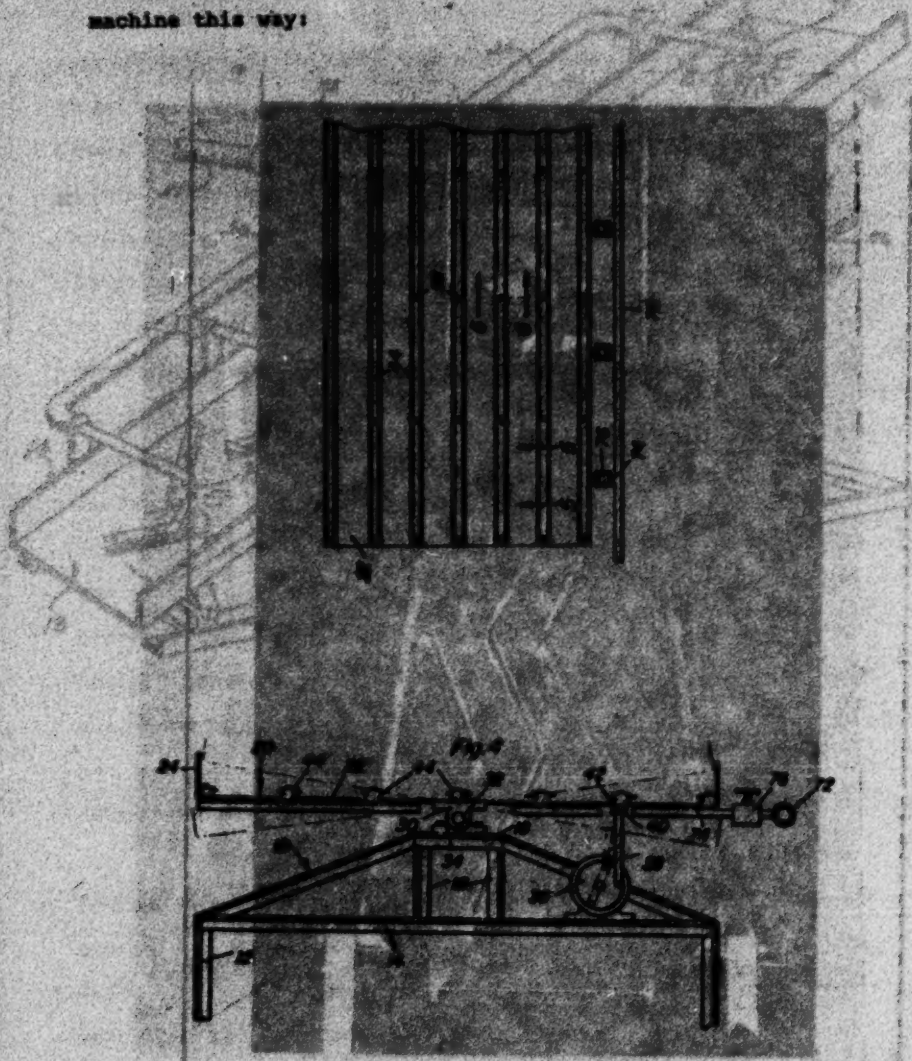


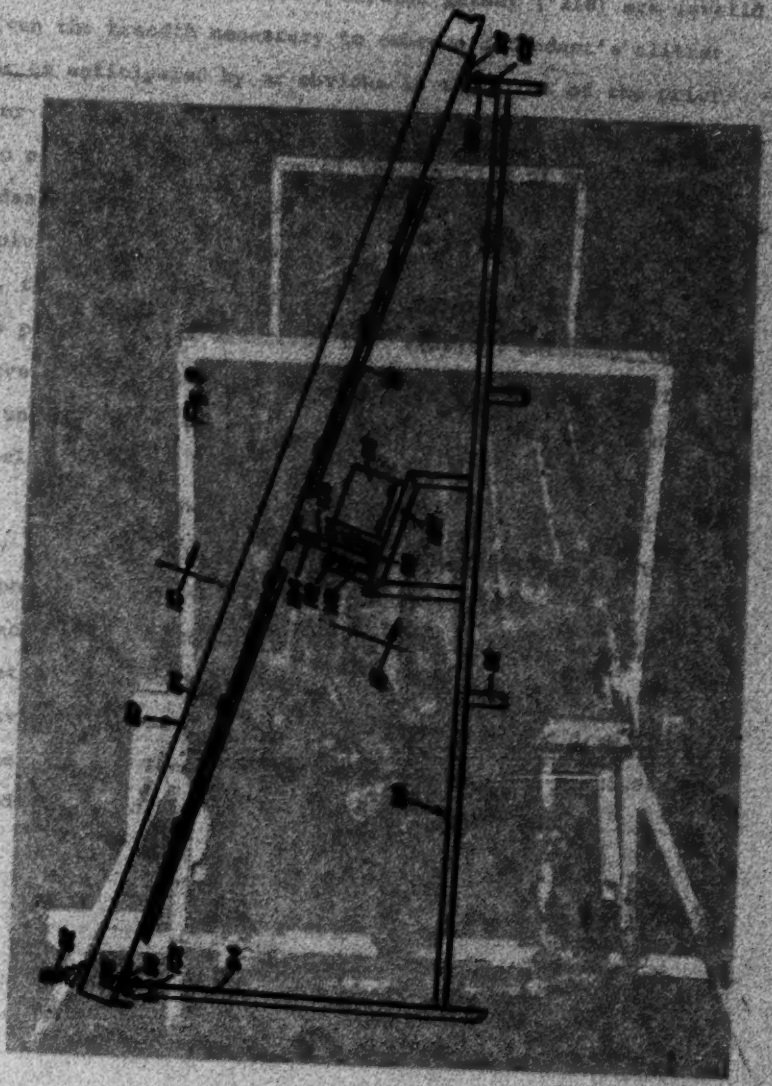




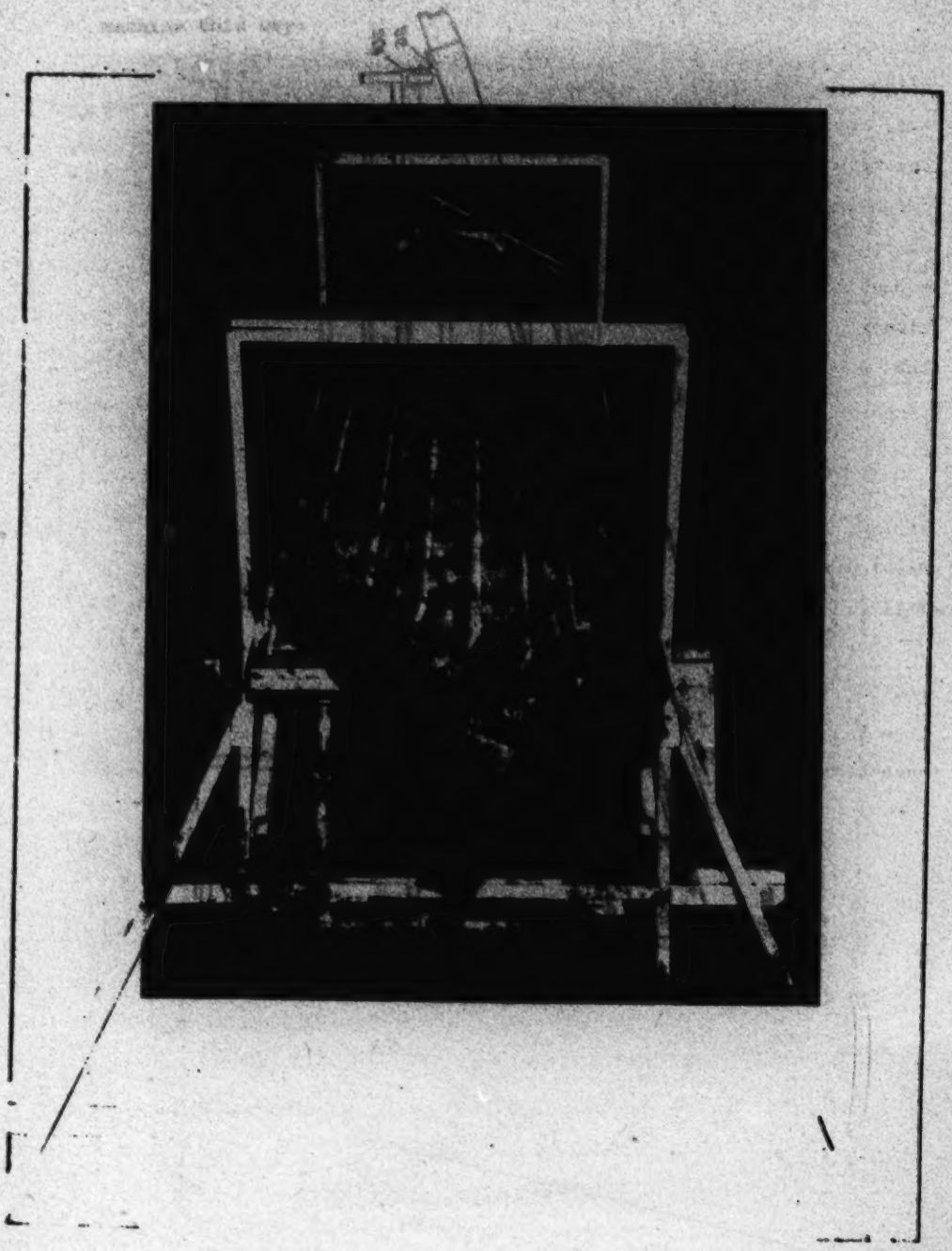
The embodiment of this patent, as it is marketed by plaintiff, looks like this:

The Skrmettas in turn devised and patented a machine utilizing the knowledge about shrimp learned by the Lapsyres. Unlike the Lapsyres' device, however, it operates with a trough that is rocked to and fro. The patent drawings illustrate the machine this way:



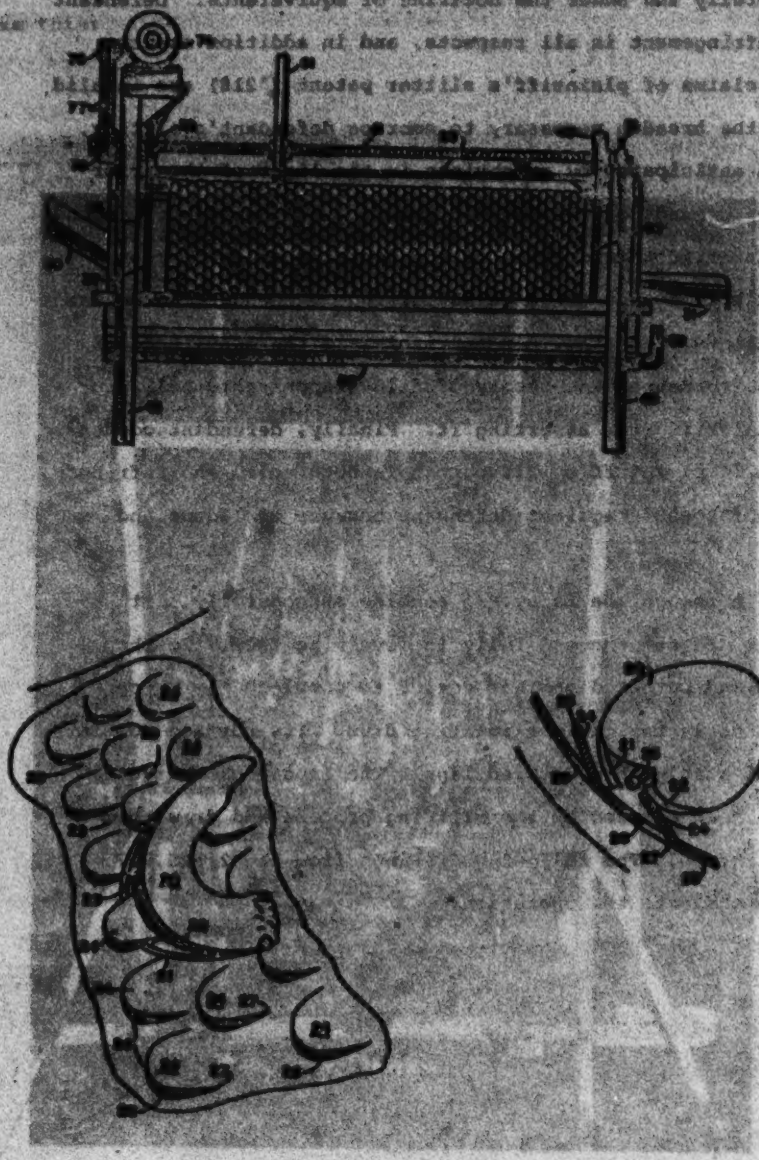


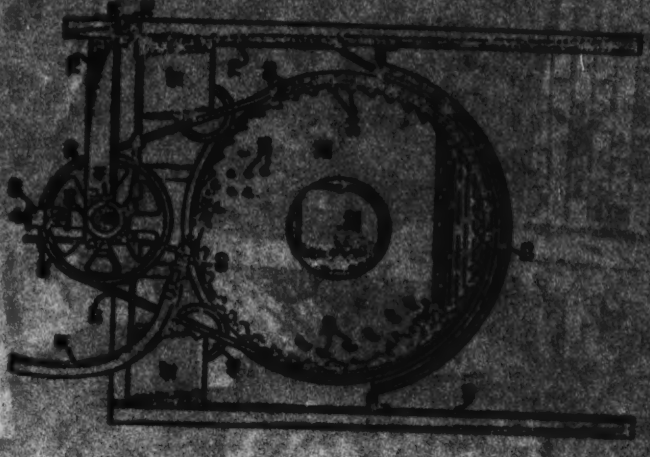
And the machine that defendant is marketing looks like this:



Plaintiff contends defendant is infringing its patent both literally and under the doctrine of equivalents. Defendant denies infringement in all respects, and in addition asserts that the claims of plaintiff's slitter patent ('218) are invalid if given the breadth necessary to embrace defendant's slitter, either as anticipated by or obvious in the light of the prior art, or on grounds of indefiniteness and undue breadth. Relating to plaintiff's invocation of the doctrine of equivalents, defendant claims that there is no infringement under the doctrine of equivalents, and that, alternatively, if the doctrine does apply, the corresponding theory of file wrapper estoppel forecloses plaintiff from asserting it. Finally, defendant contends that even if plaintiff's '218 patent is both valid and infringed, it is unenforceable against defendant because of laches and estoppel.

Although the Lapeyres' machine successfully slit shrimp, it did not succeed fully in deveining them. So they developed and patented another device to complete the process. This machine is basically a rotating drum. Its surface consists of a metal skin with punctured lips. The lips suck the veins that have been exposed by the slitting process and draw them from the shrimp. The following drawings from the 2,625,717 patent demonstrate the operation:





The manufactured machine looks like this:

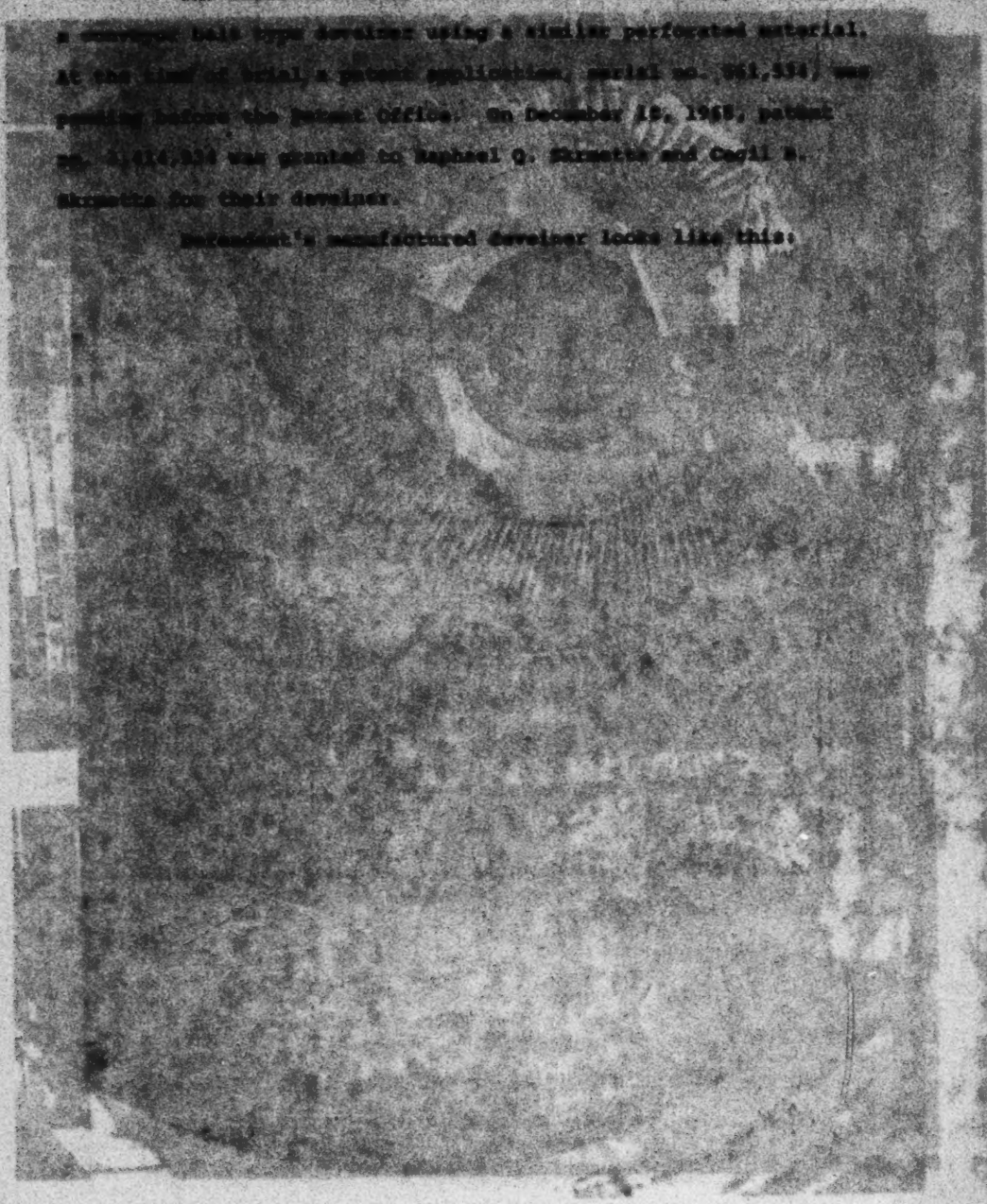
Exterior

Interior

The perforated material that is used for the drum is not patented. Indeed, the Lepeyrot ordered it from a commercial firm's catalogue.

The Skrmettas needed a developer too. So they developed a conveyor belt type developer using a similar perforated material. At the time of trial a patent application, serial no. 351,534, was pending before the patent office. On December 18, 1968, patent no. 3,414,934 was granted to Raphael Q. Skrmetta and Cecil A. Skrmetta for their developer.

Defendant's manufactured developer looks like this:



Exterior

Interior

Plaintiff contends defendant's devices infringe the '927 patent. Defendant on the other hand, argues that the asserted claims of the Levinson patent are invalid as unclear, indefinite, described in functional language, anticipated by the prior art, and obvious. And, if the patent is valid, defendant claims it has not been infringed. Finally, defendant contends that even if the '927 patent is both valid and infringed, it is unenforceable against defendant because of laches and estoppel.

The findings of fact reached after study of the evidence embodied in over 1800 pages of record and in approximately 525 exhibits are set forth separately. The conclusions of law that are to be applied to them are set forth below.

VALIDITY OF THE PLAINTIFF'S SLITTER PATENT ('218)

An issued patent is presumed valid. Post Tool Co. v. Lawrence, 5 Cir., 1957, 243 F.2d 145, 161. "An alleged infringer who assails the validity of a patent bears a heavy burden of persuasion and fails unless his evidence has more than a fictious preponderance." Great Lakes Carbon Corporation v. Continental Oil Company, W.D. La. 1963, 218 F.Supp. 468, 481, affd., 5 Cir., 1965, 345 F.2d 175; Radio Corporation of America v. Radio Engineering Laboratories, 1934, 293 U.S. 1, 8.

As set forth in the findings of fact, plaintiff's discoveries were profound. The patent they developed based on these discoveries was a pioneer one. When observed in operation, the slitter covered by the '218 patent works so easily and the principles on which it is based are so apparent that they prompt the commonplace observation, "why didn't someone think about that before?" But as the Supreme Court pointed out in Goodyear Tire and Rubber Co. v. Ray-O-Vac Co., 1944, 321 U.S. 275, 279: "Viewed after the event, the means [plaintiff] adopted seem simple and such as should have been obvious to those who worked in the field, but this is not enough to negative invention." Not only did no one develop such a machine before; many had tried without success. As the findings of fact point out, there was a clear need for the slitter and it was immediately recognized as a solution by the

industry. 5/

It is true that the principles on which the slitter operates were not new, for the Lapeyres neither invented gravity, nor discovered the lubricating quality of water; they did not design the biological qualities of shrimp nor originate the cutting force of knives. But although their invention incorporated known forces as well as newly discovered properties, the state of the prior art was clearly not "such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art...." 35 U.S.C. 103. 6/

The Lapeyre slitter was indeed a "new and useful... machine...." 7/ and added "a new and valuable article to the world's utilities...." Diamond Rubber Co. v. Consolidated Rubber Tire Co., 1911, 220 U.S. 428. "While a scientific truth or the mathematical expression of it, is not patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be," 8/ and the Lapeyres invented such a structure.

The '218 patent was neither anticipated by nor obvious in the light of the prior art. No "prior patent or other publication...bear[s] within its four corners adequate directions for the practice of the patent...." Dewey and Almy Chemical Co. v. Mimex Co., 2 Cir., 1942, 124 F.2d 986, 989. Nor are its claims indefinite or unduly broad. The statutory requirements of distinctness and particularity have been met, 9/ and the public has been informed of the patent's coverage and limitations. United Carbon Co. v. Binney and Smith Co., 1942, 317 U.S. 228. Patent No. 2,694,218 is therefore valid. 10/

LITERAL INFRINGEMENT

"The scope of every patent is limited to the invention described in the claims contained in it, read in the light of the specification....It is to the claims of every patent, therefore, that we must turn when we are seeking to determine what the invention is, the exclusive use of which is given to the inventor by

the grant provided for by the statute...." Mercoid Corp. v. Mid-Continent Co. v. Universal Film Manufacturing Co., 1917, 243 U.S. 502; Texstead Corp. v. Blakeslee, 5 Cir., 1955, 223 F.2d 893.

Plaintiff avers that claims 1, 3, 9, 10, 11, 12, 14, and 15 of Patent No. 3,494,218 have been infringed. In the findings of fact, the conclusion is reached that none of these claims has been literally infringed by defendant's running trough slitter. 11/

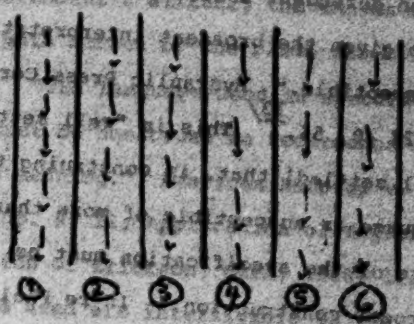
Only claim one requires additional analysis. It reads:

> "A shrimp de-veining machine comprising an inclined trough, a water supply to said trough, and knives carried by said trough and being spaced above the trough and being oppositely inclined along a path down the trough, said knives extending partially diagonally of the path in successively opposite directions."

In order for defendant's slitter to infringe claim one, its knives must be "oppositely inclined along a path down the trough" and they must extend "partially diagonally of the path in successively opposite directions." The interpretation of this claim, therefore, depends on the meaning of the word, "path," in this context.

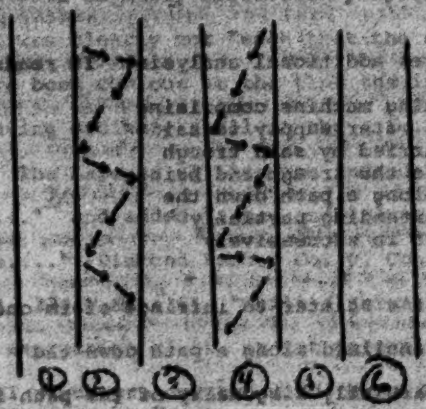
In defendant's machine, each shrimp must travel down one of a number of different "lanes" or "passageways" that are arranged in a parallel manner:

Figure 2



The sides of each lane are the knives themselves. As each shrimp moves down the trough through a lane, it is rocked back and forth from one knife to the other and therefore journeys along a zig-zag route from top to bottom:

Figure 2.



Plaintiff urges that "path" in claim one means the path of each individual shrimp, the zig-zag route outlined above. He contends that defendant's knives are oppositely inclined along a path thus defined, and extend partially diagonally of it, hence that claim one reads literally on defendant's slitter.[12]

Patent "claims must be given the broadest interpretation of which they reasonably are susceptible." Hydraulic Press Corp. v. Coe, D.C. Cir., 1943, 134 F.2d 49, 56.[13] This is "well settled."[14] But "[t]he rule is [equally well settled] that, in construing the words of a claim where the language is susceptible of more than one construction, the disclosure of the specification must be resorted to to ascertain the proper construction." In re Phelps, C.C.P.A. 1931, 47 F.2d 387, 388.[15] Since "a patentee is at

liberty to supply his own dictionary, the terms of a claim should be taken in the same sense given in the lexicon of the specification." James v. Sykes Metal Lath & Roofing Co., 6 Cir., 1919, 254 F. 91, 96.

The '218 specification reads in part:

> "The blade assemblies are arranged angularly or diagonally with respect to the long axis of the trough and the blades are relatively staggered from one side of the trough to the other. The upper ends of the blade assemblies are disposed closer to the side walls and from this point the blade assemblies progress downwardly and toward the opposite side walls of the trough. The lower end portion of each inclined blade assembly is so related to the upper end of the next assembly in order that the shrimp will be delivered in succession from the lower end of one assembly to the upper end of the opposed successive assembly, it being understood that the exposed portions of the knife blades are spaced mutually downwardly one another. Thus, altogether the blade assemblies form an irregular or zig-zag path down the center of the trough which the shrimp are compelled to follow."

Here the word "path" is not used to indicate the exact route of each individual shrimp but refers instead to the space formed by the blade assemblies through which the shrimp must pass on their descent down the trough, i.e., in defendant's slitter--the lanes or passageways formed by the knives and located between them as diagramed in Figure I, Supra. In plaintiff's machine, the path formed is indeed "irregular" or "zig-zag" because the knives are arranged angularly in the manner described in the specifications. 16/ But in defendant's slitter, the knives are parallel to each other, and the path formed by the blade assemblies is rectilineal.

"The language used in specifications and claims of a patent must be construed in accordance with its plain, usual, and ordinary meaning." American Aerovap v. Cauthorn, N.D. Tex., 1952, 103 F.Supp. 9, 11; Application of Taylor, CCPA, 1951, 183 F.2d 335; Application of Erickson, CCPA, 1948, 171 F.2d 307, 309. Only if the words used are intelligible to the reader do claims perform their function of "inform[ing] the public during the life of the patent of the limits of the monopoly asserted, so that it may be

known which features may be safely used or manufactured without a license and which may not." United Carbon Co. v. Binney & Smith Co., 1942, 317 U.S. 228, 232. Reading the word "path," as it is used in claim one, in the light of this rule and with the additional illumination cast by the specification, its most reasonable and natural meaning is the space between the knives through which the shrimp must progress on their journey down the trough.[17] Under this interpretation, the term "path" is a static rather than a changing concept for it does not vary with the particular route taken by each individual shrimp.[18] The machine need not be in operation, therefore, for the path to be determined.

In defendant's machine, the knives are parallel to the path. They are neither "oppositely inclined along a path" nor do they extend "partially diagonally of the path in successively opposite directions." Claim one therefore is not literally infringed.

DOCTRINE OF EQUIVALENTS

If patents were interpreted only by the literal scope of their claims, minor deviations in the structure of almost any invention could be devised to elude the protection of the patent.[19] The doctrine of equivalents evolved to protect the patentee from devices that differ merely in "name, form, or shape"[20] from the patented invention but perform "substantially the same function in substantially the same way to obtain the same result." Sanitary Refrigerator Company v. Winters, 1929, 280 U.S. 30, 42.

"The essence of the doctrine," we are told in Graver Tank and Mfg. Co. v. Linde Air Products Co., 1950, 339 U.S. 605, 608, "is that one may not practice a fraud on a patent." It was designed "to temper unsparing logic and prevent an infringer from stealing the benefit of the invention." L. Hand, Royal Typewriter Co. v. Remington Rand, Inc., 2 Cir., 1948, 168 F.2d 691, 692. By "express[ing] a preference for substance over verbiage,"[21] it also "serves an important procedural function in the patent

schema...by reducing the otherwise inordinate length to which language might have to be carried." Perry-Turner Corp. v. Patapsco Gear Works, Inc., 1 Cir., 1965, 355 F.2d 609, 611. Moreover, "Inasmuch since the doctrine assures the patentee the benefit of his invention, it fosters the disclosure rather than the concealment of inventions," which is one of the primary purposes of the patent system." Graver Tank and Mfg. Co. v. Linde Air Products Co., supra, at 607.

Because the doctrine of equivalents is based on equitable considerations,[22] the principle has developed "that an inventor, with respect to his patent, is entitled to a range of equivalents commensurate with the scope of his invention." Sy-Klone, Inc. v. Safeway Products, Inc., 5 Cir., 1963, 315 F.2d 23, 26. Accordingly, primary and pioneering patents are granted a broad range of equivalents. Hunt Tool Co. v. Lawrence, 5 Cir., 1957, 242 F.2d 349, 351.

The '218 patent is indeed a primary patent. The pioneering efforts of the Lapeyre resulted in a totally new machine. While others in the shrimp industry could have observed the qualities of shrimp, and developed a trough lubricated by water with sharp blades to slit the shrimp thereby exposing their veins, no one but the plaintiff did. The '218 patent, therefore, must be afforded a broad range of equivalents.

In order for defendant's slitter to be an equivalent of the device claimed by the '218 patent, it must perform "substantially the same function in substantially the same way to obtain the same result." Sanitary Refrigerator Co. v. Winters, supra. But while substantial identity of function, operation, and result are necessary, the doctrine "does not require complete identity for every purpose and in every respect. In determining equivalents, things equal to the same thing may not be equal to each other and, by the same token, things for most purposes different may sometimes be equivalents." Graver Tank and Mfg. Co. v. Linde Air Products Co., supra, at 609.

In Judge Hutcheson's words, "the decisive question here is, reading the claims of plaintiff's [pioneer] patent on the

[defendant's machine] and interpreting them fairly in accordance with their plan intent and coverage, does defendant's device infringe?" Matthews v. Keolvent Metal Awning Co., 5 Cir., 1946, 158 F.2d 37, 40. Like Judge Hutcheson, "We think it does." Equivalence is primarily a determination of fact,[23] and as the findings of fact point out, defendant's slitter is substantially identical to and infringes claims one and three of plaintiff's pioneer patent.

The doctrine of equivalents protects the "essence" of the patentee's invention. Georgia-Pacific Corp. v. United States Plywood Corp., 2 Cir., 1958, 258 F.2d 124, 137. It insures that the principle and substance of the invention are not appropriated. Grant Paper Box Co. v. Russell Box Co., 1 Cir., 1946, 154 F.2d 729, 731. Essentially, plaintiff has patented a device in which shrimp slide down a trough hitting knives at an angle so that their backs are slit and their veins are exposed. Defendant's slitter operates on the same basic principles, performs the same function and achieves the same result. As discussed, supra, claim one does not read literally on defendant's slitter because the knives in defendant's machine are not "inclined along a path down the trough" but are parallel to the path. Claim three is not literally infringed because defendant's water supply is not specifically "directed upon the shrimp." In both instances, however, defendant offers merely minor deviations in structure. Instead of using inclined knives to shunt the shrimp from side to side, it has substituted a rocking trough.[24] For lubrication, rather than a water spray directed on the shrimp, defendant has substituted a supply of running water.

In analyzing substitute ingredients, "[c]onsideration must be given to the purpose for which an ingredient is used in a patent, the qualities it has when combined with the other ingredients, and the function which it is intended to perform. An important factor is whether persons reasonably skilled in the art would have known of the interchangeability of an ingredient not

contained in the patent with one that was.". Graver Tank and Mfg. Co. v. Linde Air Products Co., supra, at 609. With these minor deviations, defendant's machine performs the same function, achieves the same results, and, operates in substantially the same manner as plaintiff's '218 patent prescribes. The shrimp are caused to hit knives at an inclination as they slide along a path down the trough. Their backs are slit and their veins are exposed. The "interchangeability" of these minor deviations in form is apparent to the eye.

The doctrine of equivalents serves to enable courts to depart from a literal meaning of patent claims to reach a "just result." Royal Typewriter Co. v. Remington Rand, Inc., supra, at 692. This case clearly calls for its exercise. While the claims of the Lapeyres' pioneer patent have been avoided in form, their invention has been utilized in substance. Borrowing from Judge Hutcheson again in Matthews, supra, 158 F.2d at 40, "the doctrine of equivalency has never been a mere dry bones doctrine. Put forward to do justice and prevent defrauding by dissimulation and deceit, it should be, it has been, applied to give its equitable purpose effect. Not at all recondite or difficult of understanding or application, it is the mere expression and application of the view that like things are alike and that they are not made unlike by formal and nonsubstantial changes, no matter how cunningly contrived the dissimulation, how clever the changes in form." Claims one and three of the '218 patent have been infringed under the doctrine of equivalents.

FILE WRAPPER ESTOPPEL

"Carried to an extreme, the doctrine of equivalents could undermine the entire patent system." Borg-Warner Corp. v. Paragon Gear Works, 1 Cir., 1965, 355 F.2d 400, 404. In order to strike a balance between the doctrine of equivalents and the excessively formal alternative of holding a patentee to the exact wording of his claims no matter how harsh the result, the counter-veiling equitable doctrine of file wrapper estoppel has been developed by the courts. See generally, Exhibit Supply Co. v. Ace

Patents Corp., 1942, 315 U.S. 126.

The file wrapper contains the complete Patent Office file of papers relating to the patent. Secret and confidential while the patent application is being reviewed, it becomes public information once the patent is issued. 25/

Under this doctrine, if the file wrapper reveals that the patentee has surrendered claims, or has amended, narrowed, or otherwise limited his claims in response to the objections of the Patent Office, he may not later recapture what he has given up through the doctrine of equivalents. Dry Hand Mop Co. v. Squeez-Eny Mop Co., 5 Cir., 1927, 17 F.2d 465. A patentee's consent to the demands of the patent examiner, made to obtain his patent, operates as a "disclaimer," and he is thereafter bound by it. Schriber-Schroth Co. v. Cleveland Trust Co., 1940, 311 U.S. 211, 221-22; Deller's Walker on Patents (2d ed., 1965), Sec. 234. "The disclosure pro tanto passes into the public domain." Musher Foundation v. Alba Trading Co., 2 Cir., 1945, 150 F.2d 885, 888.

The reason for this was pointed out by Judge Learned Hand in Musher, supra. "[I]f the rejection [by the Patent Office] is wrong, the applicant has remedies both in the Patent Office and in the courts; remedies which the cancellation of the rejected claim necessarily surrenders." After the patent has been issued, the public may examine the file wrapper to determine what has been patented and what has been relinquished by the patentee; hence "the injurious consequences to the public and to inventors and patent applicants if patentees were thus permitted to revive cancelled or rejected claims and restore them to their patents are manifest." Schriber-Schroth Co. v. Cleveland Trust Co., supra, at 221.

Plaintiff urges that the doctrine of file wrapper estoppel applies only to those claims amended or withdrawn in order to overcome objections based on the prior art, correctly citing as authority the decision of the Tenth Circuit in McCullough Tool Co. v. Well Surveys Inc., 1966, 361 F.2d 381, 403, in which the court said the doctrine "is not applicable where the patentee's difficulty results not from prior art similarities but from the wording and indefiniteness of the claims."[26] And, other courts have referred to the doctrine, in dicta, in terms of prior art rejections.[27]

On the other hand, the First and Sixth Circuits have said the doctrine extends to all cancellations and amendments, not just those based on the prior art. See Borg-Warner Corp. v. Paragon Gear Works, 1 Cir., 1965, 338 F.2d 498; Parke-Davis & Co. v. American Cyanamid Co., 6 Cir., 1953, 207 F.2d 571. In Borg-Warner, supra, a limitation in a claim had been introduced solely to overcome a rejection due to indefiniteness, not to overcome a rejection based on the prior art. "We think of no reason, and find none suggested in the cases, why the importance and materiality of language in a claim depend upon the particular objection the Patent Office had voiced," Judge Aldrich concluded, for

> "A patent may be just as invalid because the description is inadequate as it may be because of the prior art....and the examiner is as much within his rights in making one type of objection as another. Examiners doubtless on occasion overemphasize the formal requirements of 35 U.S.C. § 112. But, equally, they may demand changes in order to avoid alleged impingement upon prior inventions when in fact there is none. If an applicant who accedes to a demand based on the prior art is thereafter estopped to contest its necessity, he should equally be estopped to deny the correctness of a demand for which some other reason is given. To a party examining the file to determine the

> true scope of what has been granted, and finding something affirmatively disclaimed, it should make no difference what was the purpose of the disclaimer." 355 F.2d at 408.

To distinguish between prior art rejections and amendments and those based on other grounds is inconsistent with the rationale of the doctrine and would "tend only to further shroud the doctrine ...in an endless veil of confusion." Dvorak, "That Perplexing Problem - The Doctrine of File Wrapper Estoppel," Volume L, Journal of the Patent Office Society, 143, 146 (1968). As defendant contends, the doctrine properly applies to all patent office "surrenders."

The file wrapper reveals that claim one was initially rejected by the Patent Office on grounds of inoperability, indefiniteness, and aggregation. In the course of urging that the patent be granted, after amendments had been filed to some of the rejected claims including claim one, counsel for plaintiff formally remarked:

> "...[W]e agree that a mere plurality of knives do not constitute invention when the plurality is of a number of knives spaced successively in the same position. However, when as in this device the plurality is of knives placed in different positions to achieve a desirable result which could not otherwise be obtained, we believe that the plurality constitutes invention, the arrangement of the knives being, of course, the critical feature."

After stressing the "critical" nature of the knife arrangement in the '218 slitter in order to obtain its patent, plaintiff may no longer assert that defendant's rocking trough is the equivalent of the inclined knives that are required by claim one. The doctrine of file wrapper estoppel therefore forecloses application of the doctrine of equivalents to claim one.

But no similar file wrapper estoppel applies to claim three. The mere surrender or amendment of a claim in the Patent

Office does not forever bar a patentee from asserting the doctrine of equivalents. He is estopped only from reclaiming what he surrendered. Borg-Warner Corp. v. Paragon Gear Works, supra at 696.[38] Hence it is necessary to determine what is in fact plaintiff gave up in order to receive its patent,[39] and what is the essence or "pith and marrow" of the invention that remains. U.S. Peg-wood, Shank, and Leather Board Co. v. Starkevant Co., 1 Cir., 1903, 125 F. 383, 384; Dvorak, The Perplexing Problem, supra at 147.

As initially filed, the last sentence of claim three included the words: "...and a water spray to the trough for flushing out the vein through the severed membrane." After the claim was rejected, this phrase was amended to read: "and a water spray to the trough directed upon the shrimp for sliding shrimp down the trough and for flushing out the vein through the severed membrane." (Emphasis supplied). Because of the Patent Office's objections for inoperability and aggregation, the claim was amended to specify that the water supply is used "for sliding shrimp down the trough."

But no one who read the file wrapper as a whole would reasonably conclude that the addition made in the prosecution of this claim in response to specific rejections by the Examiner was intended to limit the claim to a water supply "directed upon the shrimp." Certainly the Patent Office did not require that the claim be limited in this manner. Claim one, which was approved by the Examiner, refers simply to "a water supply to said trough." "[T]here is no reason to presume that [an] applicant made a disclaimer broader than necessary to yield to the actual challenge to his claim." Hunt Tool Co. v. Lawrence, 5 Cir., 1957, 242 F.2d 347, 354.

In describing his device in claim three, plaintiff did not voluntarily narrow or limit his discovery. Its essence remains unchanged, and plaintiff is not estopped from asserting that claim three is infringed under the doctrine of equivalents.

VALIDITY OF THE PLAINTIFF'S DEVEINER PATENT ('927)

The deveiner developed by the Lapeyres like the slitter they invented incorporates no new mechanical principles. It is a novel combination of previously known elements.

After the Lapeyres developed their slitter, they turned to the problem of removing the veins from the backs of the now slit shrimp. Some veins were removed in the slitter trough by the action of the water, but many shrimp were still not deveined although their back muscles and sand bags (or membranes) had been cut. When it did not devein, the slitter left the vein exposed up to the fifth segment of the shrimp's body at which point it descends on a plane through the body. There was thus a very tiny soft and thread-like piece of stringy matter to be physically detached, not merely separated, from the body of the shrimp.

Prior attempts to remove the veins from slit shrimp had fallen into two general categories: (1) gouging or sawing them out as part of the slitting process before the '218 machine was developed, or (2) boiling or soaking them out while blanching the shrimp after they had been slit by hand. The Lapeyres first moved generally in the second direction, i.e., vein removal separate from the slitting process. They tried to remove veins by agitating shrimp in water and by bubbling air through the water. They also tried placing the slit shrimp in a hardware mesh basket and in an expanded metal basket, dipping the shrimp-basket into the water, raising it, and moving the shrimp through the water. In addition, they tried passing the slit shrimp through a shrimp cleaning machine.

None of these experiments resulted in a commercially acceptable level of vein removal. The Lapeyres then decided that effective deveining could be achieved only by mechanically engaging the vein and forcibly pulling it from the shrimp. Because of the large ratio of the length of the vein to the radius of its cross-section, transverse engagement was most practical. The Lapeyres therefore developed a device based on wedge-like projec-

tions that serve to hook the vein and then wedge and hold it. This represented a departure from the prior art, which was based on the vein being removed by means whose motion, if any, was longitudinal rather than transverse to the body of the shrimp.

The Lapeyres found a standard punch lip material illustrated in a commercial catalog. Most important for their purposes, the interior circumference of this material contained the projections needed to engage the veins of the slit shrimp. Hence they used the material for the outside surface of their drum.

Defendant urges that the '927 patent is invalid as aggregative, anticipated by the prior art, obvious, described in functional language, overbroad, and indefinite. While it is clear that the elements in the '927 patent, especially the punched lip material, had been available for a considerable period of time, when combined they coact in such a manner to perform a new function and produce new results.

Although "combination patents are viewed strictly,"[30] and require a high standard of invention in order to be sustained,[31] a combination clearly is patentable when it "produces a new and useful result," and emerges from "inventive skill" and imagination rather than mere "mechanical aptitude." Robertson Rock Bit Co. v. Hughes Tool Co., 5 Cir., 176 F.2d 783, 790.[32] The Fifth Circuit said in Robertson, supra:[33]

> "Judges who have tried many patent cases, who have heard the testimony of experts, the one affirming the matter to be merely an advance in mechanical steps, the other to be invention of the highest order; the one affirming prior use, the other denying it; the one affirming it to be the flight of genius into new fields, the other, the mere dull trudging of an artisan, know that for a just decision of such causes no objective criteria can be relied on. They well know that there must be in the trier something of the same imaginative response to an idea, something of that same flash of genius that there is in the inventor, which all great patent judges have had, that intuitive brilliance of the imagination, that luminous quality of the mind, that can give back, where there is invention, an answering flash for flash."

This court lacks the vanity to claim qualification under this definition. Reality constrains it instead to confess that to it, as to Marianne Moore's Steamroller: "The illustration is nothing...without the application." But, even to a mind thus limited, it is clear that in this case, "the [Lapeyre] combination is a different invention from the elements themselves, whether considered in their separate or their aggregated state," and that "the method of their cooperation in the combination [is] the result of [an] inventive act." 1, Robinson on Patents, 219-223; Pursche v. Atlas Scraper and Engineering Co., 9 Cir., 1961, 300 F.2d 467, 473-74. As Judge Hand pointed out some 42 years earlier, in another case involving the validity of a combination patent:

> "[T]he case is in substance familiar enough, one in which the inventor has culled this and that out of nearby arts, and so formed a combination nowhere before existing. It has been a success; it has substantially driven out earlier cumbersome methods; it has enabled the art to do with ease what before it could only do slowly and imperfectly. The result seems to [be] a genuine invention, and [this court] so hold[s]." Traitel Marble Co. v. U.T. Hungerford Brass & Copper Co., 2 Cir., 1927, 18 F.2d 66, 69.14/

Neither was the '927 patent anticipated by the prior art (as the findings of fact illustrate), nor "obvious at the time the invention was made to a person having ordinary skill in the art." 35 U.S.C. 103.15/

The patent, however, does have its defects. In addition to presenting a patentable invention, a patentee must comply with 35 U.S.C. 112, which provides, "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." "A patent must be a certain guide; not a congeries of pregnant suggestions." Harries v. Air King Products Co., 2 Cir., 1950, 183 F.2d 158, 160. "This requirement serves two primary purposes: those skilled in the art must be able to understand and apply the teachings of the invention, and enterprise and experimentation must not be discouraged by the creation of an area of uncertainty as to the scope of the invention." Georgia-

Pacific Corp. v. United States Plywood Corp., 2 Cir., 1958, 258 F.2d 124, 126.

Plaintiff alleges that claims 1, 12, 13, 14, 15, 17, and 18 of the '927 patent have been infringed. Of these seven claims, all but claim one are hopelessly vague and indefinite. Claim 17 is an example:

"A shrimp vein remover comprising, hook-like vein engaging means, shrimp moving means operatively associated with said vein engaging means, and means associated with at least one of said above named means for effecting relative movement therebetween."

"Absolute precision in the wording of claims, while desirable, would be an unreasonable burden to impose on an inventor." Arnold Pipe Rentals Co. v. Engineering Enterprises, Inc., 5 Cir., 1965, 350 F.2d 883, 893. But the language in claims is supposed to be "as precise as the subject matter permits." Georgia-Pacific Corp. v. United States Plywood Corp., supra, at 126. Claims 12, 13, 14, 15, 17, and 18 do not accurately describe and are not limited to the scope of the inventors' invention. They are therefore invalid under 35 U.S.C. 112.

Plaintiff's invention is capable of verbalization, however, and it was comprehensibly described and limited in claim one:

"In a shrimp vein remover, a supporting member, a lip projecting at an acute angle from the supporting member and having a smooth rounded free edge for engaging beneath the vein of a shrimp and for holding the vein between the lip and the supporting member, and means operatively associated with said supporting member for selectively moving the shrimp with respect to said member to cause separation of the vein from the shrimp meat."

While this language can claim no palmes for clarity or artistry, "it is impossible to suppose that anyone who really wished to do business in respect the patent would have any difficulty in identifying what the claim covered." Mosher Foundation v. Alba Trading Co., 2 Cir., 1945, 150 F.2d 885, 889. Claim one is valid.

INFRINGEMENT

Unlike plaintiff's machine, the Deepsouth devainer does not use a drum. But it uses the same perforated material employed

by the Laitram deveiner in essentially the same manner to perform the same function. Instead of putting the perforated material on a drum, Deepsouth makes it into a belt. The rounded edges of the lip-like projections hook the veins of the slit shrimp and serve to wedge them between the lips and the remaining metal surface. The veins then are broken or cut by the rounded sharp edges of the lips.

There are some minor differences between the two deveiners. In the Deepsouth machine, the conveyer engages the shrimp while they are moving upward out of a pool of water. The perforated material is arranged to rotate continuously. The lips face outward and devein the shrimp on the outer surface of the arc. In the Laitram deveiner, the lips face inward and deveining occurs within the drum.

Deepsouth's deveiner also uses less water than Laitram's, but this difference is occasioned merely by the difference in the form of the working surface, not by any difference in function or result. Both machines use water to bring the shrimp into position for the lips to engage the veins, and in both, water flows from the side of the working surface that contacts the shrimp to the opposite side of the working surface. In addition, in both machines, water serves to wash the surface clean.

The working surface in Deepsouth's deveiner moves faster than in Laitram's drum, but this primarily affects the amount of time during which each shrimp is exposed to the protruding lips, not the function performed by the lips. The principal purpose served by both the Laitram drum and the Deepsouth belt is propelling or conveying the shrimp.

Claim one of plaintiff's '827 patent has been literally infringed by Deepsouth's deveiner. The language of the claim reads directly on defendant's machine.

In addition, since defendant's deveiner performs "substantially the same function in substantially the same way to obtain the same result" [37] as the deveiner patented by the

Lapeyres, claim one of plaintiff's '927 patent has also been infringed under the doctrine of equivalents.

NEGATIVE DOCTRINE OF EQUIVALENTS

Deepsouth contends that even if its devoiner is within the literal language of the claims of the '927 patent, there is still no infringement because of the applicability of the "negative doctrine of equivalents"[38]: A device that falls within the literal words of a patent claim may still not infringe the claim when it "is so far changed in principle from the patented article that it performs the same or a similar function in a substantially different way." Graver Tank & Mfg. Co. v. Linde Air Products Co., 1950, 339 U.S. 605, 608-09.[39] Like the "positive" doctrine of equivalents, this prevents the triumph of form over substance.

But there is no room to apply negative equivalents here. Deepsouth's devoiner not only falls within the literal words of claim one of the '927 patent, but it is based on virtually identical principles performing the same function in substantially the same way to obtain the same result.

THE '218 AND '927 PATENTS ARE ENFORCEABLE AGAINST DEEPSOUTH

Defendant contends additionally that plaintiff is estopped from claiming infringement of the '218 and 927 patents by estoppel and laches. Both of these doctrines are equitable in origin and neither can be invoked in the absence of a showing of prejudice. Delay that does not result in a prejudicial change of position is not laches, and conduct that does not lead to detrimental reliance does not estop. Shaffer v. Rector Well Equipment Co., 5 Cir., 1946, 155 F.2d 344; Colliaies Surgical Engineering Co. v. Murray-Baumgartner Surgical Instrument Co., D. Md., 1964, 230 F.Supp. 572, 580-81, aff'd, 1965, 343 F.2d 162. Since Deepsouth was not prejudiced by Laitram's delay in filing suit nor misled to its detriment by its actions, this suit is not barred and both the '218 and '927 patents are enforceable.

Plaintiff is entitled to an accounting and proper damages for patent infringement and to an injunction against further infringement by defendant of Patents 2,694,218 and 2,825,927. Counsel for plaintiff shall prepare and submit to the court, after first affording counsel for defendant an opportunity for inspection, a proposed form of judgment in accordance with this opinion. Objections, if any, to the form of judgment shall be communicated to the court.

UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana
April 7, 1969

1/ Ecclesiastes, XXXII, 8, "Let thy speech be short, comprehending much in few words." The court acknowledges the equal applicability of this unheeded admonition to its own opinion.

2/ Mr. Justice Frankfurter dissenting in Marconi Wireless Telegraph Co. of America v. United States, 320 U.S. 1, 60-61, pointed out: "It is an old observation that the training of Anglo-American judges ill fits them to discharge the duties cast upon them by patent legislation."

3/ Laitram Corp. v. Deepsouth Co., E.D. La. 1968, 279 F.Supp. 883.

4/ In discussing validity in Reiner v. I. Leon Co., 2 Cir., 1960, 285 F.2d 501, 504, Judge Hand raised the following questions as "sign posts": "how long did the need exist;" how many tried to find the way;...how immediately was the invention recognized as an answer by those who used the new variant?"

5/ The machine was offered to the industry in July, 1965 and before the commencement of the next shrimp season in the Gulf of Mexico more than 16 canners (nearly 50% of the market) in the five states bordering the Gulf, where all domestic commercial shrimp deveining or canning is located, had leased plaintiff's machines. Today, every shrimp cannery that deveins at least 100 cases of shrimp a year utilizes either the Laitram or Deepsouth machinery.

6/ In Graham v. John Deere Company, 1966, 383 U.S. 1, 17-18, the court suggested the following as "indicia of obviousness or nonobviousness": "commercial success, long felt but unsolved needs, failure of others." See Note, Subtests of "Nonobviousness": A

Mentechnical Approach to Patent Validity, 112 U. Pa. L. Rev. 1169 (1964).

7/ 35 U.S.C. 101.

8/ Mackay Radio and Telegraph Co. v. Radio Corporation of America, 1939, 306 U.S. 86, 94. "An idea or concept is not patentable." Thomson-Machinery Co. v. LaRose, E.D. La., 1961, 197 F.Supp. 636; LeRoy v. Tatham, 1852, 55 U.S. 167, 187; Wayne v. Humble Oil and Refining Co., 5 Cir., 1949, 175 F.2d 230. 35 U.S.C. 101 grants but also limits patent protection to "any new and useful process machine, manufacture, or composition of matter." As the Court pointed out in Brenner v. Manson, 1966, 383 U.S. 519, 536, "A patent system must be related to the world of commerce rather than to the realm of philosophy."

9/ 35 U.S.C. 112 provides: "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

10/ "[T]he ultimate question of patent validity is one of law." Graham v. John Deere Company, supra, at 17; Great Atlantic and Pacific Tea Co. v. Supermarket Equipment Corp., 1950, 340 U.S. 147, 155.

11/ Infringement is a question of fact. Hahn v. Clay v. A.O. Smith Corp., 5 Cir., 1963, 320 F.2d 166.

12/ Even assuming the correctness of plaintiff's interpretation of "path," claim one still may not be literally infringed. While defendant's parallel knives may be inclined to the zig-zag path of the shrimp, they are not necessarily "oppositely inclined" nor do they clearly extend "partially diagonally of the path in successively opposite directions." In addition, the knives are oppositely inclined along the path of a shrimp only when the shrimp is at a point on its journey between the knives. When the shrimp collides with a knife, the knives are not inclined to that point "along" the path.

13/ "Were this not true, few patents could give any protection, for some departures from the precise disclosure are nearly always possible without losing the benefit of the invention." Musher Foundation v. Alba Trading Co., 2 Cir., 1945, 150 F.2d 885, 888.

14/ Rajchman v. Herbert, C.C.P.A., 1961, 113 F.2d 928.

15/ Lincoln Stores v. Nashua Mfg. Co., 1 Cir., 1946, 157 F.2d 154; Musher Foundation v. Alba Trading Co., supra, at 888; In re Keeling, C.C.P.A., 1941, 124 F.2d 193, 197; Turchan v. Marsall, D.D.C., 1952, 105 F.Supp. 266, 268. "The claim of a patent are always to be read or interpreted in the light of its specifications." Schriber-Schroth Co. v. Cleveland Trust Co., 1940, 311 U.S. 211, 217. The claim itself of course "measures the grant to the patentee," and the specifications may not be used to expand or limit the claim. Graver Tank & Mfg. Co. v. Linde Air Products Co., 1949, 336 U.S. 271, 277; See also, In re Cresswell, C.C.P.A., 1951, 187 F.2d 432; In re Hegan, C.C.P.A., 1938, 97 F.2d 86, 88. However, when the claim is ambiguous, the court must "resort to the specifications," Graver Tank & Mfg. Co. v. Linde Air Products Co., supra, and interpret the claim in their light. Application of Erickson, C.C.P.A., 1949, 171 F.2d 307, 309; In re Hegan, supra.

16/ The zig-zag path formed in plaintiff's slitter by the blade assemblies (Figure A) of course differs from the zig-zag route of each shrimp as it travels down the trough bounding from knife to knife (Figure B).

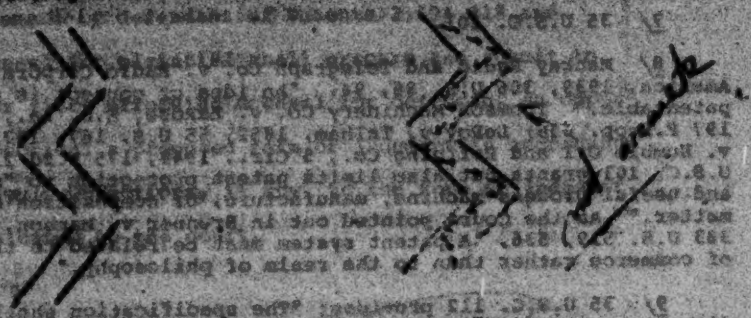


Figure A

Figure B

17/ Plaintiff's interpretation found on p.7 of his final brief (November 25, 1968) also applies: "the portion of the surface of defendant's trough defined by the knives which the shrimp traverses."

18/ In defendant's machine, the exact route taken by each shrimp depends upon the speed with which the trough is rocked, the amount of water fed into the trough, and the amount of time a shrimp remains lodged against each knife.

19/ See Glover Tank & Mfg. Co., v. Linde Air Products Co., supra, at 667.

20/ Union Paper-Bag Machine Co. v. Murphy, 97 U.S. 120.

21/ Spec-Fic Mfg. Corp. v. Binks Mfg. Co., S.D., Tex., 1967, 264 F.Supp. 542, 548.

22/ Ditto Inc. v. Minnesota Mining and Mfg. Co., 8 Cir., 1964, 336 F.2d 67, 72.

23/ Glover Tank & Mfg. Co. V. Linde Air Products Co., supra, at 665; Chemical Cleaning Inc. v. Dow Chemical Co., 5 Cir., 1967, 379 F.2d 294, 296.

24/ In Warren Telechron Co. V. Waltham Watch Co., 1 Cir., 1937, 91 F.2d 472, 473, defendant substituted "the pull of a spring for the pull of gravity." The Court stated that these were "typical equivalents."

25/ Rob Roylance, Infringement of Patents, 42 F.R.D. 43, 66 (1967).

26/ See Allen, Deere Seebach & Co. V. Deere, 10 Cir., 1963, 308 F.2d 705.

27/ For example, the Supreme Court said in Graham v. John Deere Co., supra, at 33: "claims that have been narrowed in order to obtain the issuance of a patent by distinguishing the prior art cannot be sustained to cover that which was previously by limitation eliminated from the patent." See also Matheson-Selig Co. v. Carl Scarr Color Card, Inc., N.D. Ill., 1967, 154 U.S.P.Q. 265, 277-78.

28/ "One may not seek redress of an alleged infringement of his patent when the concept disclosed and claimed is not equivalent to what he now asserts is his invention; The purpose of the doctrine of file wrapper estoppel, then, is to prevent one from

asserting a claim to something which is not his." Dvorak, "Past Perplexing Problem--The Doctrine of File Wrapper Estoppel," Volume L, Journal of the Patent Office Society, 145, 150 (1968).

29/ Edward Valves, Inc. v. Cunningham-Limp Works, Inc., 5 Cir., 1961, 286 F.2d 933.

30/ Gillis v. Smith, 5 Cir., 1959, 269 F.2d 681-82.

31/ Great Atlantic and Pacific Tea Co. v. Supermarket Equipment Corp., 1950, 340 U.S. 147; Cuno Engineering Corp. v. Automatic Devices Corp., 1941, 314 U.S. 84, 89-92.

32/ See also United States v. Adams, 1966, 383 U.S. 39, 50; Special Equipment Co. v. Coe, 1945, 324 U.S. 370, 373; Grinnell Washing Machine Co. v. E. E. Johnson Co., 1918, 247 U.S. 426; Kankinen v. Reclare Co., 9 Cir., 1962, 303 F.2d 170-88.

33/ Quoting from "Function of the 'Mosaic' in Judicial Decision," Judgment Intuitive, Foundation Press, 1938.

34/ "It may be laid down as a general rule, though perhaps not an invariable one, that if a new combination and arrangement of known elements produce a new and beneficial result, never attained before, it is evidence of invention." Webster Loom Co. v. Higgins, 1881, 105 U.S. 580, 591. See also, Grinnell Washing Machine Co. v. E. E. Johnson Co., supra.

35/ See Graham v. John Deere Co., supra, at 177 Note, Sub-tests of "Nonobviousness": A Montebello Approach to Patent Validity, 111 U. Pa. L. Rev. 1169 (1964).

36/ See also, Universal Oil Products Co. v. Globe Oil and Refining Co., 1944, 322 U.S. 471; United Carbon Co. v. Binney & Smith Co., 1942, 317 U.S. 228.

37/ Sanitary Refrigerator Co. v. Winters, 1929, 280 U.S. 30, 42.

38/ This doctrine is sometimes referred to as the doctrine of equivalents in reverse.

39/ See also, Foster Grant Co. v. Coburn, 1 Cir., 1967, 382 F.2d 761, 765; C. Pigott, Equivalents in Reverse, 43 Journal of the Patent Office Society, 291-92 (1961).

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION,	:	CIVIL ACTION
Plaintiff,	:	No. 67-861
versus	:	
DEEPSOUTH PACKING CO., INC.,	:	SECTION "C"
Defendant.	:	

JUDGMENT

This cause came on for trial before the Court on April 22 through 25, 1968 (after an operational inspection of the plaintiff's and defendant's apparatus on April 21) and on May 24 through 26, 1968, and briefs after trial having been filed by both parties, and oral argument having been held August 7, 1968, and additional briefs having been filed by both parties subsequent to oral argument, and proposed findings of fact having been submitted by both parties, and the Court having written an opinion, including conclusions of law, filed April 7, 1969, and having made findings of fact filed June 16, 1969,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Laitram Corporation is the owner of United States Letters Patent 2,694,218 and 2,825,927.

2. United States Letters Patent 2,694,218 are valid.

3. Claim 3 of United States Letters Patent 2,694,218 has been infringed by Deepsouth Packing Co.,

Inc. by the manufacture and sale of the slitter screen unit of its Model BY 465 S Shrimp Deveining Machinery.

4. Claims 1, 9, 10, 11, 12, 17 and 18 of United States Letters Patent 2,694,218 have not been infringed by the manufacture and sale by Deepsouth Packing Co., Inc. of the slitter screen unit of its Model BY 465 S Shrimp DeVeining Machinery.

5. Claim 1 of United States Letters Patent 2,825,927 is valid.

6. Claims 12, 13, 14, 15, 17 and 18 of United States Letters Patent 2,825,927 are invalid.

7. Claim 1 of United States Letters Patent 2,825,927 has been infringed by Deepsouth Packing Co., Inc. by the manufacture and sale of the shrimp vein removal apparatus of its Model BY 465 S Shrimp DeVeining Machinery.

8. United States Letters Patent Nos. 2,694,218 and 2,825,927 are enforceable against Deepsouth Packing Co., Inc.

9. Defendant Deepsouth Packing Co. Inc's counterclaim for a declaratory judgment of invalidity, non-infringement and unenforceability of United States Letters Patent 2,694,218 and 2,825,927 is dismissed with prejudice, except insofar as paragraphs 4 and 6 of this judgment otherwise provide.

10. Injunction, in the form annexed hereto, shall issue under the seal of this Court to restrain further infringement by defendant Deepsouth Packing Co., Inc. of Claim 3 of United States Letters Patent No. 2,694,218 and of Claim 1 of United States Letters Patent No. 2,825,927.

11. Plaintiff is entitled to an accounting for damages for infringement of United States Letters Patent No. 2,825,927, owned by plaintiff, which is valid and has been infringed by Deepsouth Packing Co., Inc.

And this Court, in its Opinion filed April 7, 1969,

and proper damages for infringement. The date for the hearing for the determination and to fix the damages shall be set by the Court within 30 days after the time for appeal to the Court of Appeals expires, if no appeal is taken, or, if an appeal is taken, within 30 days after the decision of this Court is affirmed by final decision of any appropriate higher court.

12. The Court reserves jurisdiction over the matter of the taxing of costs and the amount of costs to be taxed.

(signed) ALVIN B. RUBIN

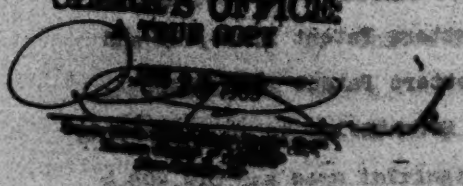
United States District Judge

Dated: New Orleans, Louisiana
June 30, 1969

APPROVED:

Deepsouth Packing Co., Inc.
through C. Emmett Pugh, its attorney,
at 500 St. Peter Street, New Orleans

CLERK'S OFFICE:
A TRUE COPY



-3-

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION, : CIVIL ACTION

PLAINTIFF, : NO. 67-281

VERSUS :

DEEPSOUTH PACKING CO., INC., : SECTION "A"

DEFENDANT. :

: : : : : : : : : : : : : : : : : :

WRIT OF INJUNCTION

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO: DEEPSOUTH PACKING CO., INC., a Louisiana corporation, your officers, agents, servants, employees and attorneys, and those persons in active concert or participation with you

GREETING:

WHEREAS, by an opinion of this Court, including conclusions of law, filed April 7, 1969, by findings of fact of this Court, filed June 26, 1969 and by judgment of this Court entered June 3rd, 1969, it appears

(i) that United States Letters Patent No. 2,694,218, owned by The Laitram Corporation, is valid and that Claim 3 thereof has been infringed by Deepsouth Packing Co., Inc., and

(ii) that Claim 1 of United States Letters Patent No. 2,845,927, owned by The Laitram Corporation, is valid and has been infringed by Deepsouth Packing Co., Inc.,

AND this Court, in its opinion filed April 7, 1969, having held that The Laitram Corporation is entitled to an

injunction against further infringement of Claim 3 of its United States Letters Patent No. 2,694,218 and against further infringement of Claim 1 of its United States Letters Patent No. 2,825,927 by defendant, Deepsouth Packing Co., Inc.;

NOW, THEREFORE, we do hereby strictly command and enjoin you, Deepsouth Packing Co., Inc., your attorneys acting on your behalf, your officers, agents, servants and employees and those persons in active concert or participation with you;

UNTIL the expiration of United States Letters Patent No. 2,694,218, or until the decision of this Court shall have been reversed by final decision of any appropriate higher court, whichever shall occur the sooner,

FROM:

(a) making, using or selling any apparatus which infringes Claim 3 of United States Letters Patent No. 2,694,218,

(b) actively inducing others to infringe or contributorily infringing Claim 3 of United States Letters Patent No. 2,694,218;

AND, until the expiration of United States Letters Patent No. 2,825,927, or until the decision of this Court shall have been reversed by final decision of any appropriate higher court, whichever shall occur the sooner,

FROM:

(c) making, using or selling any apparatus which infringes Claim 1 of United States Letters Patent No. 2,825,927;

(d) actively inducing others to infringe or contributorily infringing Claim 1 of United States Letters Patent No. 2,825,927.

WITNESS THE HONORABLE ALVIN B. RUBIN, Judge of the United States District Court for the Eastern District of Louisiana, this 30 day of June, 1969.

(signed) ALVIN B. RUBIN

United States District Judge

SERVE:

Hoopeenth Packing Co., Inc.
through G. Emmett Pugh, its attorney,
at 500 St. Peter Street, New Orleans

CLERK'S OFFICE
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OPINION ON DEFENDANTS MOTION TO MODIFY INJUNCTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE LAITRAM CORPORATION,	*	CIVIL ACTION
Plaintiff	*	NO. 67-861
versus	*	SECTION "C"
	*	
DEEPSOUTH PACKING CO., INC.,	*	
Defendant.	*	

* *

Lewis H. Eslinger, Esq.
New York, N.Y.
Attorney for Plaintiff

Guy W. Shoup, Esq.
New York, N.Y.
Attorney for Plaintiff

Louis B. Claverie, Esq.
New Orleans, La.
Attorney for Plaintiff

Harold J. Birch, Esq.
Washington, D.C.
Attorney for Defendant

C. Emmett Pugh, Esq.
New Orleans, La.
Attorney for Defendant

RUBIN, District Judge:

The defendant, Deepsouth Packing Co., Inc., has requested a modification of the injunction issued on June 30, 1969 to make it clear that it does not prohibit the manufacture and sale of a slitter and deveiner unit in unassembled form for export to a Brazilian customer. The defendant will supply all of the parts necessary for the complete operation of the slitter and deveiner; it will be necessary for the buyer only to assemble the unit after arrival, provide electrical current and water. Assembly will require some mechanical skill. The seller proposes to do the assembly itself in Brazil.

Mr. Justice Black, concurring in part and dissenting in part in Lear, Incorporated v. Adkins, 1969, ____U.S.____, 89 S.Ct. 1902, 1914, noted, "[t]he national policy expressed in the

patent laws, favor[s] free competition and narrowly limit[s] monopoly * * *."

> "[I]n rewarding useful invention, the 'rights and welfare of the community must be fairly dealt with and effectually guarded.' Kendall v. Winsor, 21 How. 322, 329, 16 L.Ed. 165 (1859). To that end the prerequisites to obtaining a patent are strictly observed, and when the patent has issued the limitations on its exercise are equally strictly enforced. * * * Once the patent issues, it is strictly construed. United States v. Masonite Corp., 316 U.S. 265, 280, 62 S.Ct. 1070, 1078, 86 L.Ed. 1461 (1942). it cannot be used to secure any monopoly beyond that contained in the patent, Morton Salt Co. v. G. S. Suppiger Co., 314 U.S. 488, 492, 62 S.Ct. 402, 405, 86 L.Ed. 363 (1942), the patentee's control over the product when it leaves his hands is sharply limited, see United States v. Univis Lens Co., 316 U.S. 241, 250-252, 62 S.Ct. 1088, 1093-1094, 86 L.Ed. 1408 (1942), and the patent monopoly may not be used in disregard of the antitrust laws, see International Business Machines Corp. v. United States, 298 U.S. 131, 56 S.Ct. 701, 80 L.Ed. 1085 (1936); United Shoe Machinery Corp. v. United States, 258 U.S. 451, 463-464, 42 S.Ct. 363, 367, 66 L.Ed. 708 (1922)." Sears, Roebuck & Co. v. Stiffel Company, 1964, 376 U.S. 225, 230, 84 S.Ct. 784, 788.

Every court of appeal that has considered an actual situation in any way resembling the one here proposed has held that the sale of a product for export in unassembled form is not an infringement of the domestic patent. In Radio Corporation of America v. Andrea, 2 Cir. 1935, 79 F.2d 627, the court considered the matter with respect to a combination patent. On a motion for a preliminary injunction, it was shown that the defendants manufactured all of the components of the patented radio receivers exclusive of vacuum tubes. The tubes were purchased by the defendants in the open market. To operate the receiver it was necessary only to insert the vacuum tubes into the sockets provided for them and to connect the receiver by means of a wire and plug provided for that purpose to a source of electrical power, such as the electric lighting system in a private home. The court held that the sale of receiver and vacuum tube separately solely for export was not an infringement and denied the injunction, saying:

> "Nor is this conclusion so highly technical as it may at first blush appear. No wrong is

done the patentee until the combination is formed. His monopoly does not cover the manufacture or sale of separate elements capable of being, but never actually, associated to form the invention. Only when such association is made is there a direct infringement of his monopoly, and not even then if it is done outside the territory for which the monopoly was granted. This is the basis for the doctrine of contributory infringement, which permits the elements of a patented combination to be sold in this country with the intent that the purchaser shall make and use the invention abroad. Bullock Electric & Mfg. Co. v. Westinghouse Electric & Mfg. Co., 129 F. 103 (C.C.A.); Computing Scale Co. v. Toledo Computing Scale Co., 279 F.648, 678 (C.C.A. 7); In re Autorg Trading Corporation, 75 F.(2d) 626, 631 (Cust. & Pat. App.). Not disputing this principle of law when only part of the elements of a patented combination are involved in the sale, the plaintiffs apparently contend that it is inapplicable when all the elements are sold together, though disassembled and intended to be put into operable relationship only abroad. No authority has been cited which puts any such limitation upon the doctrine of contributory infringement; and on principle none such is justifiable. By their sales for export the defendants were guilty of neither direct nor contributory infringement." 79 F.2d at 628-629.

After the case had been heard on the merits, this matter was again before the Court of Appeals for the Second Circuit, Radio Corporation of America v. Andrea, 2 Cir. 1937, 90 F.2d 612. Additional facts introduced at the final hearing indicated that before exporting them, the defendants assembled and used the receivers with the vacuum tubes in their sockets to determine the marketability of the receivers. Thus, the entire combination was completed and used in the United States. Thereafter, the tube was removed from its socket and the receiver and the tube were packed in the receiver cabinet and sold. The tubes were placed in a separate carton and this, with the receiver, was placed in a larger carton. The purchaser needed only to connect the tube by inserting it in the socket. No adjustment was required; "no screw or nut need be tightened." The court found there was an infringement and said:

> "Where the elements of an invention are thus sold in substantially unified and combined form, infringement may not be avoided by a separation or division of parts which leaves to the purchaser a simple task of integration. Otherwise a patentee would be denied adequate protection. Cf. Mikel Process Co. v. Minnesota Paper Co., 261 U.S. 45, 63, 43 S.Ct. 322, 328, 67 L.Ed. 523." 90 F.2d at 613.

It distinguished the situation presented at the time of its prior opinion by the circumstance that it had now been shown that the receiver and tubes were assembled completely and tests of operation were made before exportation. "The sales for the completed receiving sets were made within the territorial limits of the United States and shipped in export. The single package contained all the elements of the combination." 90 F.2d at 614.

The decree was then modified although Judge Swan dissented on the basis of the original opinion. Plaintiffs argue saying that Judge Swan was correct in / that the prior opinion was in effect overruled; a majority of that court did not think so.

Nor, later, did the Third Circuit. In Cold Metal Process Co. v. United Engineering and Foundry Co., 3 Cir. 1936, 235 F.2d 224, the court dealt with interpretation of a license. In doing so it was required to determine the scope of the patent. The court quoted with approval from, and relied on, the rule laid down in the first Andrea decision saying:

> "Its force, in our view, is not impaired by the later opinion of the court after final hearing in the same case, 2 Cir., 1937, 90 F.2d 612, which held that the defendant had infringed the combination patent there sued on in view of evidence that the radio sets in question had been completely assembled in this country and tests of operation made after which they were disassembled and shipped to purchasers abroad. We do not quarrel with the conclusion of the court that such assembling and testing constituted a making and use of the patented combination in this country. In the present case, however, no such assembling or testing in this country took place. Accordingly the rule laid down in the first Andrea opinion applies here rather than that stated in the second." 235 F.2d at 230.

In Hewitt-Robins, Inc., v. Link-Belt Company, 7 Cir. 1966, 371 F.2d 225, the defendant sold a structure for erection

in Turkey. It was suggested that, under Pennsylvania law, this constituted the sale of a single commercial unit, title passed in the United States, and it was immaterial that the sale was not preceeded by either complete assembly or actual use of the patented combination in the United States. The court said that Pennsylvania law was not controlling and held that the manufacture and sale of the apparatus did not constitute an infringement of the United States patent, saying,

> "We read Andrea as standing for the proposition that a combination claim of a United States patent is not infringed absent presence of the combination in assembled form within the United States." 371 F.2d at 229.

The court also considered the Cold Metal decision and affirmed the district court opinion holding that there had been no infringement.

Only one decision has been cited that is said to hold to the contrary, the unreported opinion of Judge Learned Hand in Westinghouse Electric and Manufacturing Co. & Radio Corporation of America v. Experimenters Information Service, Inc., S.D.N.Y. 1924. This opinion is based on a motion for preliminary injunction. The facts are not clear, but it appears that there was a sale and delivery of a complete set of parts. The opinion does not indicate whether this was intended for export or domestic use, nor does it indicate whether assembly would take place in the United States or in a foreign country. On the other hand, the cases relied upon by Judge Hand as authority for finding infringement, Strobridge v. Lindsay, Sterritt & Co., 1881, 6 Fed. 510 and Spirella Co. v. Nubone Corset Co., 1910, 180 Fed. 470, 473, involved patented articles intended for assembly and use within the territorial United States. The decision antedates all the jurisprudence of the circuit courts referred to above. Under the circumstances, I do not think it can be relied on to support a contrary doctrine.

It may be urged that the first Andrea result is not logical -- or that it is at best law logic, which John Quincy Adams told John Marshall was "an artificial system of reasoning,

exclusively used in courts of justice, but good for nothing anywhere else." But it is founded on twin notions that underlie the patent laws. One is that a combination patent protects only the combination. The other is that monopolies -- even those conferred by patents -- are not viewed with favor. These are logic enough.

For these reasons, the court does not believe that the injunction, as entered, prohibits the sale proposed. There is, therefore, no reason to modify the terms of the injunction itself.

The proposed advertising would indicate to the public in the United States that shrimp deveining machines are available for sale in the United States. In fact, the defendant has no such items for sale except infringing ones, and the advertisement is, in my opinion, misleading. The court is of the opinion that such an advertisement constitutes a violation of the injunction and will modify the injunction, if required, to prohibit such advertisements hereafter.

Counsel for the mover will present such order as may be appropriate in the light of this opinion.

UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana
March 9th, 1970.

OPINION OF COURT OF APPEALS, FIFTH CIRCUIT
REVERSING AND REMANDING

1a

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29776

THE LAITRAM CORPORATION, *Plaintiff-Appellant*,

versus

DEEPSOUTH PACKING CO., INC., *Defendant-Appellee*.

Appeal from the United States District Court for the Eastern District of Louisiana

(May 26, 1971)

Before BROWN, Chief Judge, GOLDBERG and CLARK, Circuit Judges.

CLARK, Circuit Judge: We have held this day in a companion case, *Laitram Corp.* v. *Deepsouth Packing Co., Inc.*, ante, that the district court was correct in determining that Laitram's patents were valid, and that Deepsouth had infringed Claim 3 of the '218 patent and Claim 1 of the '927 patent. Our present problem is to decide whether Deepsouth may sell its infringing machine in foreign markets when it produces all essential parts of the machine in the United States but ships it in a form which contemplates minor final assembly in such foreign markets. We hold it may not.

35 U.S.C.A. § 271(a) proscribes the unauthorized making of any patented invention within the United States.[1] Therefore, our specific task is to determine the meaning and scope of the word "makes" in § 271(a) within the context of this litigation. The district court, after enjoining Deepsouth from further infringing Laitram's patents, ruled that the infringing machine was not "made" in the United States, if not assembled in final operable condition prior to export, and accordingly modified its injunction order to permit sale abroad where the machinery was not put into operable condition in the United States.

It is undisputed that all the parts for the deveiner are produced in the United States. Not all of the parts, however, are assembled together in the United States into a complete working machine. In particular, the razor blades and the water header are not attached to the trough in the slitter and the fingernail belt is not placed in the discharge conveyor. In addition, when the machine is shipped, the razor blades, water header and trough are placed in three different crates, and the fingernail belt is crated separately from the discharge conveyor. Mr. Skrmetta, president of Deepsouth, admitted, however, that the machine could be assembled in less than an hour once it arrived overseas. His frank description of his situation to a foreign customer was this:

> "We are handicapped by a decision against us in the United States. This was a very technical decision and we can manufacture the entire machine without any complication in the United States, with the exception that there are two parts that must not be assembled in the United States, but assembled after the machine arrives in Brazil. This assembly will take less than one hour."

---

[1] "Except as otherwise provided in this title, whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent." 35 U.S.C.A. § 271(a) (1954).

The issue in this case appears to be one of first impression in this Circuit, and has only been decided in three other circuits. *See Radio Corp. of America* v. *Andrea*, 79 F.2d 627 (2nd Cir. 1935); *Cold Metal Process Co.* v. *United Engineering & Foundry Co.*, 235 F.2d 224 (3rd Cir. 1956); *Hewitt-Robins, Inc.* v. *Link Belt Co.*, 371 F.2d 225 (7th Cir. 1966). It should be noted that the last two decisions did nothing more than follow *Andrea*. The district judge was clearly correct in determining that these cases stand for the proposition that a machine is not made in the United States until it is in fully assembled form. What he could not know is that we would refuse to follow them.

To see how the courts have worked themselves into what we perceive to be a conceptual box, one must begin with the rule that a patent protects only the machine in its totality and not its individual unassembled elements. *Brown* v. *Guild*, 23 (Wall) 181, 90 U.S. 160, 23 L.Ed. 160 (1874); *Aro Mfg. Co., Inc.* v. *Convertible Top Replacement Co.*, 365 U.S. 336, 81 S.Ct. 599, 5 L.Ed. 2d 592 (1961); *Mercoid Corp.* v. *Minneapolis-Honeywell Regulator Co.*, 320 U.S. 680, 64 S.Ct. 278, 88 L.Ed. 396 (1943). From this well-known rule, the other circuits have reasoned that since the patent is on the whole and not merely on the parts, the protection of the patent laws is not extended until the machine is complete. Since the machine was not completed within the United States, there can literally be no infringement. "No wrong is done the patentee until the combination is formed." *Radio Corp. of America* v. *Andrea, supra* at 628.

We reject this reasoning. The word "makes" should not be given an artificial, technical construction but should be accorded a construction in keeping with the ordinary meaning of that term.

The fact situation in *Andrea* well illustrates the point. This case involved an injunction suit against an accused infringer of radio sets. It was undisputed that all the parts of the radio were manufactured in the United States, but

to make the sets operational one had to perform the simple process of inserting vacuum tubes into sockets and then plugging the radio into a wall socket. These acts were performed overseas, but it was admitted that only a matter of seconds was involved. The court nevertheless held that the radio sets were not *made* in the United States, and thus no infringement had occurred. Yet, on a second appeal after remand the court held that since additional proof disclosed the tubes had actually been inserted in the sockets in the United States for purposes of testing and then disconnected for shipment, the radio sets were "made within the United States" because they were "physically connected in an operable relationship." *Radio Corp. of America* v. *Andrea*, 90 F.2d 612 (2nd Cir. 1937).

Such a dependence on technicality would require us to countenance obvious schemes, perhaps as simple as omitting an important screw, designed to evade the mandate of § 271(a). No such magical significance should be accorded under § 271(a) to the place of ultimate mechanical assembly of a machine's elements. We hold that "makes" means what it ordinarily connotes—the substantial manufacture of the constituent parts of the machine. To hold otherwise would subvert the Constitutional scheme of promoting "the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U. S. Const. art. I § 8 Cl. 8. It would allow an infringer to set up shop next door to a patent-protected inventor whose product enjoys a substantial foreign market and deprive him of this valuable business. If this Constitutional protection is to be fully effectuated, it must extend to an infringer who manufactures in the United States and then captures the foreign markets from the patentee. The Constitutional mandate cannot be limited to just manufacturing and selling within the United States. The infringer would then be allowed to reap the fruits of the

American economy—technology, labor, materials, etc.—but would not be subject to the responsibilities of the American patent laws. We cannot permit an infringer to enjoy these benefits and then be allowed to strip away a portion of the patentee's protection.

The purpose behind the *Brown, Aro, Mercoid* rule is to prevent the patentee from exercising exclusive control over the constituent elements of his patented machine. The public has a right to utilize these elements and is only precluded from making use of the patented machine itself. Thus when interpreting § 271(a), we must balance the protection extended to the patentee by the patent laws with the public's right to use the constituent elements. This is why we do not decide at this time whether *all* of the parts must be produced in the United States. That decision must await the presentation of that fact situation. But we do hold that when all the parts of a patented machine are produced in the United States and, in merely minor respects, the machine is to be finally assembled for its intended use in a foreign country, that the machine is "made" within the United States. Here we do not have a question of the public's right to use a constituent element, but rather Deepsouth's right to use the entire patented machine. We must, therefore, give full effect to the complete panoply of the patent laws which is extended to the patentee.

The decision of the district court is reversed and the cause is remanded with directions to the district court to withdraw its modifications to the injunctive relief granted to Laitram and to take any further proceedings which it may determine to be necessary to comply with the import of this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.

6a

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28286

THE LAITRAM CORPORATION, *Plaintiff-Appellee,*

versus

DEEPSOUTH PACKING CO., INC., *Defendant-Appellant.*

Appeal from the United States District Court for the Eastern District of Louisiana

(May 26, 1971)

Before BROWN, Chief Judge, GOLDBERG and CLARK, Circuit Judges.

CLARK, Circuit Judge: This patent appeal does not present purely legal questions as the appellant's attorney urges. The issues are deeply steeped in fact findings and conclusions of the trial court. This court no more retries the facts in patent cases than it does any other class of matters. *Hughes Tool Co.* v. *Varel Manufacturing Co.*, 336 F.2d 61 (5th Cir. 1964). In the almost two-year period between mid-1967 and 1969 when this case was pending in the district court, the parties compiled two volumes of pleadings, 11 volumes of trial and hearing transcript, a book of written and photographic exhibits, numerous physical exhibits and over 500 pages of briefs and memoranda. In addition to this welter of material, the conscientious trial judge viewed motion pictures of the subject machinery in operation and personally witnessed actual on-site demonstrations of both

the patented and allegedly infringing machinery in actual commercial establishment operation and in the form of reconstructed replicas. To record his endeavors and determinations, he filed a 30-page finding of fact and prepared and published a detailed opinion discussing the prior litigation history of these parties and dealing in depth with each of the claims raised. *See* 301 F.Supp. 1037 (1969). The three judges on this appellate panel have reviewed such of this material from the trial court record as has been called to our attention, together with over 300 pages of briefs filed here, and we have listened to full oral arguments. After testing every action of the trial judge which appellant assigns as error, we find no merit in the appeal and affirm the judgment entered below.

Since the district judge has published an elaborate opinion which, with its accompanying drawings and photographs, will provide any interested reader with full information as to the most intricate function of the machinery involved, it is entirely unnecessary for us to reiterate the facts in any detail. It is sufficient for an understanding of our discussion to give the following summary. The assignors of Plaintiff-Appellee, The Laitram Corporation (Laitram), obtained two United States patents covering machinery designed to remove the veins from the back of previously pealed shrimp meats on a high volume, low labor basis. Viewed from the standpoint of the product processed —the shrimp meats—the physical function of the patented machinery is this. The pealed shrimp meats are delivered to the top of an inclined trough, then, with the aid of lubricating water, gravity and a physical phenomenon first noticed by these inventors cause the meats to slide back first through a series of knives positioned in a herringbone pattern down the length of the trough, in the course of which zig zag motions the backs of the shrimp meats strike again and again against sharp knives which slit the back open and expose the vein. The sloshing water also acts to wash loose some, but less than a commercially acceptable

number, of the veins during the course of this journey. At the bottom of the trough the meats fall into a tank containing running water and a turning drum constructed of punched metal, having an inside surface composed of numerous projections similar to fingernails which catch and remove the remaining veins while the running water moves the meats along the length of the drum to the point of discharge. This machinery is covered by two separate patents. Patent #2,694,218 (218) covers the inclined trough and knife portion of the machinery, while patent #2,825,927 (927) covers the punched metal drum apparatus.

The Defendant-Appellant, Deepsouth Packing Company, Inc. (Deepsouth), has manufactured competing devices which perform the identical function. Deepsouth's watered trough has its knives in straight lines running the length of the trough and the shrimp meats are brought into contact with the knives by rocking the entire trough back and forth so that the shrimp follow a substantially similar herringbone pattern as they descend the trough, striking first one knife then another; at the bottom of the trough the shrimp are washed into contact with an endless belt constructed of the same punched metal material as Laitram's drum, by a system of water jets, developed and patented by Deepsouth, which strike the shrimp meats and wash the veins from most of them. This punched metal belt picks up the shrimp meats and deveins the remainder of them as they are moved to the end of the belt.

The trial court found claims 1 and 3 of the 218 patent to be valid and infringed by the machinery marketed by Deepsouth, under the doctrine of equivalents.[1] However,

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[1] These claims read as follows:

"1. A shrimp de-veining machine comprising an inclined trough, a water supply to said trough, and knives carried by said trough and being spaced above the trough and being oppositely inclined along a path down the trough,

the court concluded that claim 1 of this patent was unenforceable as to Deepsouth because of file wrapper estoppel. The remaining claims of 218 were found not to be infringed by Deepsouth's machinery either literally or by their equivalence. With regard to the 927 patent, the court found claim 1 to be valid and infringed,[2] while finding the remaining claims asserted to be infringed were overbroad and indefinite. The court refused to apply the negative doctrine of equivalents to free Deepsouth from liability for infringing 927.

On this appeal Deepsouth challenges the court's findings as to the 218 patent, claiming: (a) a total lack of equivalence, (b) file wrapper estoppel should have been applied to preclude claim 3 in the same manner it was to bar claim 1, (c) claim 3 was anticipated by a prior patent—McKinstry (#2,649,980), (d) claim 3 was fatally broad and indefinite, (e) laches and estoppel prevented any claim of infringement, (f) the court erred in barring Deepsouth from intro-

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said knives extending partially diagonally of the path in successively opposite directions.

• • •

"3. A shrimp de-veining machine comprising an inclined trough down which the shrimp are induced to slide, a knife in said trough position to be encountered by the shrimp to cut the membrane confining the vein, and a water spray to the trough directed upon the shrimp for sliding shrimp down the trough and for flushing out the vein through the severed membrane."

[2] This claim reads thus:

"In a shrimp vein remover, a supporting member, a lip projecting at an acute angle from the supporting member and having a smooth rounded free edge for engaging beneath the vein of a shrimp and for wedging the vein between the lip and the supporting member, and means operatively associated with said supporting member for relatively moving the shrimp with respect to said member to cause separation of the vein from the shrimp meat."

ducing two pieces of documentary evidence which disclosed Laitram's knowledge of Deepsouth's early deveiner machinery activities.

As to infringement of the 927 patent, Deepsouth asserts that claim 1 is invalid (a) for overbreadth and indefiniteness; (b) if not overbroad, because of anticipation by the prior patents of Miller (#2,637,064) and White (#71,434); (c) because of obviousness in view of White, in combination with patents of Macklett (#565,999) or Kell (#1,028,736); and (d) because the court failed to apply the negative doctrine of equivalents.

In determining whether the trial court was correct in holding that Laitram's patents are valid and describe what Deepsouth's machinery accomplishes, we must consider the doctrines of obviousness, anticipation and equivalence.

In determining that Laitram's patents were novel, useful and not obvious, the trial court correctly applied the standard of *Graham* v. *John Deere Co.*, 383 U.S. 1, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966), as it was later stressed in *Anderson's-Black Rock, Inc.* v. *Pavement Salvage Co., Inc.*, 396 U.S. 57, 90 S.Ct. 305, 24 L.Ed.2d 258 (1969), when it determined the facts which composed the scope and content of prior art and the differences between the prior art and the claims at issue, then made the mixed factual-legal determination that Laitram's improvement was not obvious to one possessing the level of ordinary skill in that art. *Swofford* v. *B & W, Inc.*, 395 F.2d 362 (5th Cir. 1968); *Deere & Company* v. *Hesston Corp.*, — F.2d — (5th Cir. 1971) [No. 29768, March 12, 1971]; *cf. Stamicarbon N.V.* v. *Escambia Chemical Corp.*, 430 F.2d 920 (5th Cir. 1970), and *Inject-O-Meter Manufacturing Co., Inc.* v. *North Plains Fertilizer and Chemical, Inc.*, — F.2d — (5th Cir. 1970) [No. 29362, March 3, 1970]. *See also* R. Sherman, Obviousness: A Question of Law or Fact? 51 Journal of the Patent Office Society 547 (1969).

Anticipation by prior art structures is largely a question of fact in any case and this is uniquely so in the case at bar. The district court's findings on this facet of the case were made without error in legal principle and are to be tested by the plainly erroneous concept of Fed.R.Civ.P. 52(a). *Hughes Tool Co.*, v. *Ingersoll-Rand Co.*, —— F.2d —— (5th Cir. 1971) [No. 28704 Feb. 5, 1971]. *Sterner Lighting, Inc.* v. *Allied Electrical Supply, Inc.*, 431 F.2d 539 (5th Cir. 1970).

When deciding whether equivalence exists in an allegedly infringing device, *Graver Tank & Manufacturing Co.* v. *Linde Air Products Co.* (on reh.) 339 U.S. 605, 70 S.Ct. 854, 94 L.Ed. 1097 (1950) teaches that a court must not subordinate form to substance. If two devices do the same work in substantially the same way and accomplish substantially the same result, they are the same even though they differ in name, form or shape. What constitutes equivalency is ordinarily to be decided by the trial court against the context of the patent, the prior art and the particular circumstances of the case, giving consideration to the purposes, quality and function of the patented device. Determining whether the Laitram and the Deepsouth machinery were equivalents entails predominantly determinations of fact requiring the balancing of credibility, persuasiveness and weight of evidence; and the trial court's decision here for review was largely based on its findings as to these criteria. Therefore, under the general principles of appellate review which are equally applicable to patent cases, it should not be disturbed unless it is clearly erroneous. *Sterner Lighting, Inc.* v. *Allied Electrical Supply, Inc., supra; V & S Ice Machine Company, Inc.* v. *Eastex Poultry Company, Inc.*, —— F.2d —— (5th Cir. 1971) [No. 29516 Jan. 15, 1971]; 5 J. Moore, Federal Practice ¶ 52.05[2] at 2697 (2d ed. 1969).

Considering the legal standards which are to be applied in such cases, we hold in sum that the trial court

acted correctly when it refused to be led into such a technical consideration of the form of the separate elements in Laitram's patents as would submerge the overall substance of what these patents claimed to do and the substantiality of the functions they described. Patent construction is seldom a matter of pure literalism. *Merry Manufacturing Company v. Burns Tool Company*, 335 F.2d 239 (5th Cir. 1964). This is so because a patent is to be construed as a contract, with the intent of the parties as the lodestar. It is the real invention claimed and granted protection which we seek to determine. *Del Francia v. Stanthony Corporation*, 278 F.2d 745 (9th Cir. 1960). A claim may be and frequently is given its true meaning by reference to the accompanying specifications and drawings which while they cannot enlarge it, may give the claim such limitation and definition as is necessary to make its abstract words descriptive of a specific device or process.

To support its claim that the 218 patent was not valid, Deepsouth alluded to a pre-existing patent issued to McKinstry. The McKinstry device was physically presented to this court at oral argument and its operational characteristics were explained. It had to be hand fed by placing one shrimp meat at a time in a precise back down position in the orifice of the machine. This feature, together with the saw and water spray employed to rip out each vein, clearly distinguish it from Laitram's 218 patent, which introduced the shrimp processing industry to volume deveining on a scale never before imagined possible.

Deepsouth suggested obviousness of the 927 patent in the court below on the basis of 48 different patents. That court considered this gaggle of patents singly and in combination with one or more of the others and concluded that they did not render 927 invalid. On appeal the number of claimed prior art disclosures has now been reduced to four. After detailed examination of these devices, we

fail to detect any error in the trial court's conclusion that no prior patent disclosed the subject matter of the uncomplicated invention taught by 927. Deepsouth concedes that one of the four patents stressed here, Miller, differs markedly in design from the structure disclosed by 927. It refers to Miller to support its contention that since the isolated words of claim 1 could be applied to describe Miller, this shows that claim 1 of 927 is void for over-claiming invention. But as we have stated, claim 1 cannot be thus singled out of its context for destruction. It must be read in the light of the specifications and accompanying drawings, and when it is, the relevance of Miller evaporates. The White patent, both singularly and in combination with Macklett and Kell, discloses only generally similar machinery designed to perform fish scaling rather than shrimp deveining. We reject the notion that the mechanical problem of engaging and removing a flat resilient scale from the side of a fish is analogous to removing a soft thread-like piece of stringy matter from the body of a shrimp meat. This is no more logical than contending that playing tiddly-winks is akin to threading a needle. The trial court's finding that the 927 patent discloses a new structure, a new mode of operation and new, beneficial and useful results in shrimp deveining, together with his finding that the combination of elements in the 927 patent are so arranged and so cooperate as to function in a manner different from the prior art known in this field and to accomplish more than merely replacing labor, are correct findings supported by competent evidence, and are not shown to be even arguably, let alone clearly erroneous.

We further agree with the factual conclusion that the real art of the 927 patent—which teaches a method of clearing veins from the backs of slit shrimp meats—is uncomplicated and that the very fact that appellant cited 48 patents covering related or associated processes, not one of which taught this simple invention, indicates as a

matter of law that it was not obvious to those then possessed of the ordinary skill of the art in this field.

We decline to be drawn, even so far as the trial court was, into a discussion of the structural dissimilarities between the mechanics of bringing the shrimp meats into contact with identical fingernail-like projections on the *outside* of a punched metal belt jostled by jets of water, rather than *inside* a tumbling drum constructed of the same material, which was half full of flowing water. Not only do such minor changes in structure or form fail to detract from the equivalence of the two operations, they also clearly show that so long as mechanical substance is allowed to control the mere form of words, the negative doctrine of equivalents does not apply. The essential effectiveness of the fingernail-type material for shrimp vein removal is further demonstrated by the fact that Deepsouth originally tried to make its machinery which performed this function out of a wire mesh material but without success. It is to be noted that failure occurred despite the accompanying use of Deepsouth's own patented jet washer system in the operation of such shrimp deveining machinery.

The key ingredients of commercially successful deveining machinery remain an inclined trough lubricated by water, knives positioned so that they strike and slit the backs of the shrimp meats as they slide down this trough, coupled with a mechanical method whereby the slit shrimp meats are brought into contact with punched metal lips which hook, wedge and pull out the dangling veins. It was Laitram's assignors who discovered that these ingredients would perform this useful function, and the grant of the 218 and 927 patents resulted. We affirm that the district court was correct in holding that the questioned claims of these patents are valid and are not simply brutum fulmen licenses to litigate. Further, we hold that the court correctly applied the doctrine of

equivalents to find infringement of the 218 patent and correctly declined to apply equivalents in reverse to avoid a holding of infringement on the 927 patent.

Deepsouth contends that the court erred in failing to invoke the doctrine of file wrapper estoppel as to claim 3 of the 218 patent and places strong reliance upon the fact that the court used that doctrine to hold claim 1 of the 218 patent was not infringed. While we agree with the trial court's legal conclusion that the doctrine of file wrapper estoppel properly applies to all patent office surrenders, not merely to those which are based, upon prior art, we conclude that rather than erring in failing to apply the doctrine of file wrapper estoppel to claim 3, the trial court erred in applying that doctrine to claim 1. The facts show that during the course of obtaining its 218 patent, Laitram amended wording in the last sentence of claim 3 from ". . . and a water spray to the trough for flushing out the vein through the severed membrane" to ". . . and a water spray to the trough *directed upon the shrimp for sliding shrimp down the trough and* for flushing out the vein through the severed membrane". The trial court correctly refused to conclude that the addition of these words constituted a surrender which limited claim 3 to a device wherein the water supply was directed solely upon the shrimp. If anything, the addition of the phrase highlighted the function of the water spray for the purpose of aiding gravity to orient the shrimp meats for proper slitting, and certainly the evidence establishes that the discovery of the fact that if shrimp meats were allowed to slide freely down a a wet trough they would uniformly orient themselves back side down, was at the heart of the claimed invention. Deepsouth's contention, so strongly emphasizing that the additional function of the water spray was to be directed upon the shrimp, completely overlooks the remainder of the addition "for sliding shrimp down the trough". Laitram was not estopped by this addition to claim 3.

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Our disagreement with the invocation of file wrapper estoppel as to claim 1 is briefly stated, since it does not affect the overall outcome of the appeal and is noted only to maintain consistency in our decision. The file in the patent office discloses that during the process of examining the 218 application counsel for the applicant had stressed that the herringbone arrangement of the knives in the 218 trough was a critical feature. The trial court found that this emphasis on the criticality of knife positions estopped Laitram from asserting that Deepsouth's rocking trough was the equivalent of Laitram's inclined knives. However, such a determination really recognizes form over substance. The position of the knives was only important to the function of 218 in that the knives had to be so positioned and spaced as to hit the back of each shrimp meat with sufficient force to cut it, then send it toward the next knife far enough down the trough to allow the shrimp to again orient its back side down. The letter of counsel was entirely correct that this positioning was critical where the trough was not moved. But just as the trial court was unwilling to allow Deepsouth to rock its trough to zig zag the shrimp from knife to knife and infringe claim 3, we would hold claim 1 equally infringed by Deepsouth under the doctrine of equivalents.

The final challenge of the appeal goes to the trial court's refusal to apply laches and estoppel to bar Laitram in enforcing its patent rights. Coupled with the broad assertion of error in applying these equitable doctrines is an objection to the court's refusal to admit two documents into evidence. These documents which passed from Deepsouth to third parties, made specific references to shrimp deveining machinery available for lease or sale, and Deepsouth contends that Laitram had knowledge of the contents of these documents in 1968. The court ruled the documents irrelevant and found that Laitram first acquired knowledge of Deepsouth's deveiner activities in 1962. The court held that the tendered documents showed

no more than that Deepsouth was trying to develop a deveining machine or trying to sell such a machine and that the holder of a patent would not be obliged, on the basis of such information, to make an inspection to determine if the machinery was infringing. The admission of such evidence is largely within a trial court's discretion. *Patterson v. McWane Cast Iron Pipe Co.*, 331 F.2d 921 (5th Cir. 1964). We decline to invade the trial court's discretionary province as to the admissibility of this peripheral evidence.

Here again, there is really no basis for dispute as to the existence of competent evidence to support the court's specific findings of fact. The disagreement arises because the ultimate conclusions of fact were made as they were. Based upon findings that Laitram's predecessor knew of a patent issued for a rocking shrimp slitter much like the rocking slitter found to infringe, and knew that such a machine had been put together with Deepsouth's assistance and information in the year 1962, and upon a finding that Laitram first learned of Deepsouth's use of a punched metal fingernail belt in a deveining device in 1965, the court found that Laitram asserted its patent rights within a reasonable period of time. It further found that the time which elapsed after Laitram became aware of Deepsouth's actual devices was not of sufficient length to induce Deepsouth to believe that Laitram had abandoned its patents or considered its patent rights to be worthless. The court found no acquiescence by Laitram in any of Deepsouth's activities. Although the court found that because of prior patent infringement litigation between the parties Laitram ought to have inspected Deepsouth's machines when Deepsouth advised it in mid-October 1964 that it had developed a deveining machine which it was preparing to offer to shrimp canners and processers, the court nevertheless found that Deepsouth could not reasonably have relied upon Laitram's failure to inspect, and that such a failure would not estop Laitram

in the present assertion of its patent rights because Deepsouth failed to show any significant investment in plant or equipment relative to manufacture of deveining machinery made as a result of Laitram's conduct.

Deepsouth insists that a serviceman employed by Laitram's predecessor had knowledge of a test run on an experimental rocking slitter in mid-1967. However, the court found that information about this test was never brought to the attention of any responsible person in the company's management until after the present suit was filed. All allegations of laches or estoppel refer only to the shrimp slitter covered by the 218 patent. No issue is raised that Laitram was guilty of inequitable inaction after it got the mid-1965 information concerning infringement of the 927 patent.

Laitram emphasizes that Deepsouth invoiced its first infringing shrimp deveiner March 22, 1965; and the present action was commenced a little over 20 months later. Laitram further charges that Deepsouth did not rely on any failure to act by it, but rather relied upon the urgings of potential customers and opinions of its attorneys that its deveining equipment did not infringe.

In the midst of such equivocal facts and such charges and counter-charges and, given the trial court's prerogative and duty to draw conclusions of fact from the evidence and testimony presented to it when it is exercising its broad equitable discretion to enjoin, we see no clearly erroneous fact determination and no abuse of discretion on that court's part in rejecting this equitable defense.

The judgment dated June 30, 1969 is affirmed and the cause is remanded for accounting, damage and cost proceedings in accordance therewith and not inconsistent with this opinion.

AFFIRMED AND REMANDED.

19a

Constitutional Provision Involved

Article I, Section 8:

"The Congress shall have Power • • •

"To Promote the Progress of Science and useful Arts, by securing for Limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; • • •." [U.S.C.A., *Constitution*, 1st Vol., p. 39].

Statutes Involved

35 U.S.C. 100: DEFINITIONS:

When used in this title unless the context otherwise indicates—

(a) The term "invention" means invention or discovery.

(b) The term "process" means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.

(c) The terms "United States" and "this country" mean the United States of America, its territories and possessions.

(d) The word "patentee" includes not only the patentee to whom the patent was issued but also the successors in title to the patentee. [35 U.S.C.A., 1st Vol., p. 80.]

35 U.S.C. 101: INVENTIONS PATENTABLE: Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title. [35 U.S.C.A., 1st Vol., p. 80].

35 U.S.C. 102: CONDITIONS FOR PATENTABILITY; NOVELTY AND LOSS OF RIGHT TO PATENT: A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country * * * more than one year prior to the date of the application for patent in the United States, or

* * *

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, * * *. [35 U.S.C.A., 1st Vol., p. 81].

35 U.S.C. 112: SPECIFICATION:

* * * *

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention * * *. [35 U.S.C.A., 1st Vol., p. 82].

35 U.S.C. 271: INFRINGEMENT OF PATENT:

(a) Except as otherwise provided in this title, whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent * * *. [35 U.S.C.A., 1st Vol., p. 101].

LETTER FROM CLERK, SUPREME COURT REGARDING ISSUES TO BE HEARD

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

E. ROBERT SEAVER
Clerk of the Court

January 17, 1972

C. Emmett Pugh, Esq.
328 Chartres Street
New Orleans, Louisiana 70130

RE: DEEPSOUTH PACKING CO. v. LAITRAM CORP.
No. 71-315

Dear Mr. Pugh:

Confirming our telegram of today the Court took the following action in the above case:

"The petition for a writ of certiorari is granted limited to Question 1, presented by the petition, which reads as follows:

'1. Is an apparatus claim of a United States patent directed to a combination of elements, each of which is old, infringed under 35 U.S.C. § 271(a) when:
(a) although the individual elements are manufactured in the United States,
(b) the individual elements are never assembled in the United States, and
(c) the first and only assembly of the elemental parts into an operable combination or apparatus occurs, and all testing, adjustment, modification and use of the assembled apparatus is conducted in a foreign country?'"

Enclosed is a memorandum describing the time requirements and procedures under the Rules.

Very truly yours,

E. ROBERT SEAVER, Clerk
By Helen K. Loughran
(Mrs.) Helen K. Loughran
Assistant Clerk

AIR MAIL
Enclosures
cc: Guy W. Shoup, Esq.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE LAITRAM CORPORATION,
Plaintiff

versus

DEEPSOUTH PACKING CO., INC.,
Defendant

CIVIL ACTION
NO. 67-861
DIVISION C

REQUEST FOR THE ADMISSION OF GENUINESS OF DOCUMENTS

Comes now the defendant, Deepsouth Packing Co., Inc., and requests the plaintiff, within at least the time specified in Rule 36 or a shorter period as set by the court, pursuant to the provisions of Rule 36 of the Federal Rules of Civil Procedure, to separately and individually admit the genuineness of the documents described herein and attached to this Request.

To assist the plaintiff in the review of these documents and for reference purposes only, the documents have been noted as be J. M. Lapeyre Exhibits 3, 4, 6, 7, 9, 10, 11, 12, 13 and 14 as used in "The Matter of Grand Caillou Packing Company, Inc., et al.", Docket #7857, before the Federal Trade Commission.

C. Emmett Pugh
LAKE & PUGH
Attorneys for Defendant
618 Gravier Street
New Orleans, Louisiana
70130

Of Counsel:
Paul L. O'Brien
HANSON, COBB, O'Brien & TUCKER
888-17th Street, NW
Washington, D.C.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE LAITRAM CORPORATION,
Plaintiff

versus

DEEPSOUTH PACKING CO., INC.,
Defendant

CIVIL ACTION
NO. 67-861
DIVISION C

DEFENDANT'S INTERROGATORIES

Defendant, Deepsouth Packing Co., Inc., pursuant to Rule 33, hereby requests plaintiff, the Laitram Corporation, to answer under oath each of the interrogatories set forth in the numbered paragraphs below and serve a copy of such answers upon defendant's attorneys within at least the time specified in Rule 33 or a shorter period as set by the court.

1. a) What patent rights in foreign countries has plaintiff ever secured or owned which are based on the same disclosure and/or patent claims, or part of the same disclosure and/or patent claims found in U.S. Patent 2,788,055? In identifying the foreign patent rights, list for each the country, patent number, type of patent, date of filing, date of issuance, term of patent and whether or not any other foreign or U.S. patent application was noted in the application which matured into said foreign patent rights.

b) Which of the foreign patent rights identified in interrogatory 1(a) does Laitram Corporation still own?

c) Which of the foreign patent rights indentified in interrogatory 1(a) does Laitram International, Inc. presently own?

d) Has Laitram Corporation ever unsuccessfully attempted or negotiated the sale or assignment of any part of the foreign patent rights identified in interrogatory 1(a) to a second party?

e) If the answer to interrogatory 1(d) is in the affirmative, identify fully the second party in each attempt or negotiation giving his last known post office address and list the dates of the activities involved, the foreign patent rights involved and in detail what rights, privileges or other consideration the second party desired which would not be met by the Laitram Corporation.

f) Has Laitram Corporation ever sold or assigned any of the foreign patent rights identified in interrogatory 1(a) to a second party other than Laitram International, Inc.

g) If the answer to interrogatory 1(f) is in the affirmative, in each and every instance identify fully the second party giving his last known post office address and list the dates of the activities involved, the foreign patent rights involved.

h) Has Laitram International, Inc. ever sold or assigned any of the foreign patent rights identified in interrogatory 1(a)?

i) If the answer to interrogatory 1(h) is in the affirmative, in each instance identify fully the second party giving his last known post office address and list the dates of the activities involved and the foreign patent rights involved.

2. a) What was the earliest date on which either an officer[] or director of Laitram Corporation directly or indirectly knew or was aware that Deepsouth Packing Co., Inc. or Mr. Ray Stevens was testing and/or developing shrimp deveining machines? In listing the date(s) above, list the officer or director involved and his position with the corporation.

b) What was the earliest date on which an employee or agent of the Laitram Corporation directly or indirectly knew or was aware that Deepsouth Packing Co., Inc. or Mr. Raphael O. Stevens, Sr. was testing

and/or developing shrimp deveining machines? In listing the date(s) above also list the employee or agent involved and his position or relation with the corporation.

3) a) What was the earliest date on which either an officer or director of Laitram Corporation directly or indirectly knew or was aware that Deepsouth Packing Co., Inc. or Mr. Raphael O. Skrmetta, Sr. was manufacturing and/or using shrimp deveining machines. In listing the date(s) above, also list the officer or director involved and his position with the corporation.

b) What was the earliest date at which an employee or agent of the Laitram Corporation directly or indirectly knew or was aware that Deepsouth Packing Co., Inc. or Mr. Raphael O. Skrmetta, Sr. was manufacturing and/or using shrimp deveining machines? In listing the date(s) above also list the employee or agent involved and his position with or relation to the corporation.

4. a) What was the earliest date on which either an officer or director of Laitram Corporation directly or indirectly knew or was aware that Deepsouth Packing Co., Inc. or Mr. Raphael Skrmetta was selling shrimp deveining machines. In listing the date(s) above, also list the officer or director involved and his position with the corporation.

b) What was the earliest date at which an employee or agent of the Laitram Corporation directly or indirectly knew or was aware that Deepsouth Packing Co., Inc. or Mr. Raphael O. Skrmetta, Sr. was selling shrimp deveining machines? In listing the date(s) above, also list the employee or agent involved and his position with or relation to the corporation.

5. a) What was the earliest date an officer or director of the Laitram Corporation had a general knowledge of the structure and/or operation of a shrimp deveining apparatus manufactured by Deepsouth Packing Co., Inc. or Mr. Raphael O. Skrmetta, Sr. in any substantial way similar to that pictured in plaintiff's photographic Exhibits 1-8 (Skrmetta deposition, August 11, 1967

in listing the date(s) above, also list the officer or director involved and his position with the corporation.

b) What was the earliest date an employee or agent of the Laitram Corporation had a general knowledge of the structure and/or operation of a shrimp deveining apparatus manufactured by Deepsouth Packing Co., Inc. or Mr. Raphael G. Skrmetta, Sr. which was in any substantial way similar to that pictured in plaintiff's photographic Exhibits 1-8 (Skrmetta Deposition, August 11, 1967). Initiating the date(s) above, also list the employee or agent involved and his position or relation to the corporation.

6. a) What was the earliest date an officer or director of the Laitram Corporation had a general knowledge of the structure and/or operation of a shrimp deveining apparatus manufactured by Deepsouth Packing Co., Inc. or Mr. Raphael G. Skrmetta, Sr. which was in any substantial way similar to that pictured in plaintiff's photographic Exhibits 9-13 (Skrmetta deposition, August 11, 1967). In listing the date(s) above, also list the officer or director involved and his position with the corporation.

b) What was the earliest date an employee or agent of the Laitram Corporation had a general knowledge of the structure and/or operation of a shrimp deveining apparatus manufactured by Deepsouth Packing Co., Inc. or Mr. Raphael G. Skrmetta, Sr. which was in any substantial way similar to that pictured in plaintiff's photographic Exhibits 9-13 (Skrmetta deposition, August 11, 1967)? In listing the date(s) above, also list the employee or agent involved and his position with or relation to the corporation.

7. a) After a service man-employee conducts in plant servicing of a customer's shrimp processing machinery leased by Laitram Corporation, is an oral or written report generally made either directly or indirectly to an officer or director of Laitram Corporation?

b) If the answer to interrogatory 7(a) is in the affirmative, did any such reports given in the years 1961-1966 contain information concerning items other than those directly concerning the Laitram machinery and its servicing?

8. a) Have there ever been any oral or written reports by any employee or agent of Laitram Corporation in the years 1961-1966 containing any information directly or indirectly concerning shrimp deveining machinery manufactured, sold or used by Deepsouth Packing Co., Inc. or Mr. Raphael O. Skrmetta, Sr.

b) If the answer to interrogatory 8(a) is in the affirmative, describe by title, date, and page numbers, or any other suitable way, all documents known to the plaintiff which are the original, copy or transcript of the reports of interrogatory 8(a).

9. a) Has plaintiff through any of its officers, directors, employees or agents requested or received of legal counsel an opinion of whether or not a shrimp deveining machine as used, manufactured or sold by Deepsouth Packing Co., Inc. or Mr. Raphael O. Skrmetta, Sr. infringed either U.S. Patents 2,694,218 or 2,825,927, two of the patents of this suit?

b) If the answer to interrogatory 9(a) was in the affirmative, describe each such request by date of request, person who made such request and counsel of whom the request was made and describe each such received opinion by date of receipt, legal counsel rendering the opinion, person to whom opinion was given and the gist of the opinion (e.g. infringement, non-infringement, etc.).

c) If the answer to interrogatory 9(a) is in the affirmative, describe by title, date, and page numbers, or any other suitable way, all documents known to plaintiff which are the original, copy or transcript of the request(s) or opinion(s) of interrogatory 9(a).

18. a) At what date(s) was plaintiff through any of its officers, directors, employees or agents aware or with knowledge of a sale of a shrimp deveining machine manufactured and/or sold by Dempwolf Welding Co., Inc. or Mr. Raphael G. Steranka, Sr.?

b) List as many of the following details as previously known to plaintiff of each sale of interrogatory 18(a) customer to whom sold, date of installation of the machine, first time machine was viewed by an officer director, employee or agent of Laitram Corporation, and the person through whom the plaintiff was made aware or had knowledge.

C. Emmett Pugh
LAKE & PUGH
Attorneys for defendant
616 Conti Street
New Orleans, Louisiana
70130

Of Counsel:

Paul L. O'Brien
HANSON, COBB, O'BRIEN & TUCKER
888-17th Street, NW
Washington, D.C.

PROOF OF SERVICE

I, C. Emmett Pugh, attorney for the above named defendant, Deepsouth Packing Co., Inc., certify that on the 19th day of September, 1967, I hand-delivered a copy of the foregoing interrogatories to the office of Louis B. Claverie, Esquire, Room 420, Hibernia Bank Building, New Orleans, Louisiana.

C. Emmett Pugh

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE LAITRAM CORPORATION, Plaintiff	:	CIVIL ACTION
versus	:	NO. 67-851
	:	DIVISION C
DEEPSOUTH PACKING CO., INC., Defendant	:	

PLAINTIFF'S ANSWERS TO
DEFENDANT'S INTERROGATORIES

COMES NOW the plaintiff, The Laitram Corporation, and for answer to defendant's interrogatories, says: (the answers being answered corresponding to the interrogatories).

1. a) Plaintiff has never secured or owned any foreign patents which were filed under the International Convention for the protection of industrial property and which were based on U. S. Serial No. 231,307 (now U. S. Patent No. 2,778,055). However, Laitram International, Inc. owns the foreign patents identified in Schedule A annexed hereto. As to the type of patent, date of filing, date of issuance and the term of patent, all such information appears on said letters patents. Laitram International, Inc. is in possession of copies of said patents and plaintiff will cause Laitram International, Inc. to make available for inspection and copying all of said patents to defendant's counsel during reasonable business hours at the law offices of Felix E. Lapeyre, Esq., 1500 National Bank of Commerce Building, New Orleans, Louisiana.

b) None.

c) All of them.

d) No.

e) Not applicable.

f) No.

g) Not applicable.

h) No.

i) Not applicable.

2. a) October 14, 1964. Fernand S. Lapeyre, President and Director of The Laitram Corporation.

b) On or shortly after October 14, 1964. Raymond V. LaJeune, Service Co-ordinator of The Laitram Corporation.

3. a) On December 1, 1964. Fernand S. Lapeyre, President and Director of The Laitram Corporation.

b) On or shortly after December 1, 1964. Raymond V. LaJeune, Service Co-ordinator of The Laitram Corporation.

4. a) On or about April 23, 1966. Fernand S. Lapeyre, President and Director of The Laitram Corporation.

b) On or about April 23, 1966. Raymond V. LaJeune, Service Co-ordinator of The Laitram Corporation.

5. a) On or about May 13, 1965. Fernand S. Lapeyre, President and Director of The Laitram Corporation.

b) On or about May 13, 1965. James C. Little, serviceman for The Laitram Corporation.

6.a a) On or about June 15, 1965. Fernand S. Lapeyre, President and Director of The Laitram Corporation.

b) On or about June 15, 1965. James C. Little, serviceman for The Laitram Corporation.

7. a) No.

b) Not applicable.

8. a) Plaintiff received reports beginning approximately May of 1965 regarding the installation of developing machines which plaintiff assumed to be manufactured by Deepsouth Packing Co., Inc. or Raphael Q. Skrmetta, Sr.

b) Plaintiff has a file of miscellaneous memoranda, notes, sketches and the like which from time to time have been submitted by various

of its employees.

An undated report written by Felix E. Lepeyre to counsel for the plaintiff and forwarded with a letter dated May 2, 1966 to W. H. Keith, Esquire, also of counsel for plaintiff.

A report dated 11/15/66 written by Fernand E. Lepeyre and sent to plaintiff's counsel, A. Robert Thalheim.

9. a) Yes.

b) 1. May 2, 1966 and May 1967.

2. Fernand E. Lepeyre.

3. Wilfred H. Keith; Raymond J. Mackinney; A. Robert Thalheim; Jennings, Carter & Thompson.

4. June 23, 1965, December 7, 1966 and June 1967.

5. See 9. b) 3. above.

6. Fernand E. Lepeyre.

7. The gist of the opinions was that said patents both were infringed by the accused Strnotta machines.

c) 1. Letter dated May 2, 1966 to Mr. W. H. Keith from Felix E. Lepeyre requesting an opinion relative to infringement of said patents.

2. Letter of A. Robert Thalheim to Fernand E. Lepeyre dated December 7, 1966 requesting an opinion relative to infringement.

10. a) In a conversation on or about April 25, 1966 with Mr. Anthony Gutcher of Gutcher Canning Company, Fernand E. Lepeyre was given to understand that one or more operators had purchased Strnotta deveining machines, according to Mr. Gutcher's information.

b) Plaintiff knows none of the details requested in 10. b).

THE LAITRAM CORPORATION

By: Fernand E. Lepeyre
Fernand E. Lepeyre, President

STATE OF LOUISIANA

PARISH OF ORLEANS

Personally appeared before the undersigned FERNAND S. LAFEVRE, who being first sworn, says that he is the President of The Laitram Corporation, the plaintiff in this case; that as to the foregoing Answers to Interrogatories being those which it is advised that he should answer are true as to his best information, knowledge and belief.

NOTARY PUBLIC

CERTIFICATE OF SERVICE

A copy of the within Answers to Defendant's Interrogatories has been served by personally delivering same to C. Ernest Pugh, Esquire, attorney for defendant, at 616 Conti Street, New Orleans, Louisiana, on the 22nd day of September, 1967.

ITINA	103,076	6-N-V[illegible]
ALIA	204,69V	8-19-V[illegible]
SIUM	V10,431	[illegible]
IL	63,104	[illegible]
SIAM	402	[illegible]
DA	V39,346	9-16-V[illegible]
DA	V63,446	9-12-V[illegible]
ON	4,276	1-27-V[illegible]
A	16,748	12-8-V7
MARK	92,V14	7-11-VV
NOOR	1,081	6-26-V7
PT	1,926	1-21-V6
NCE	1,137,413	7-13-[illegible]
DCE	17,3VV	1-24-V[illegible]
STAN	773,264	7-7-VV
AND	91,V48	6-17-V9
AND	403	V-N-V9
A	VV,20V	8-18-VV
ICA	790	3-9-V[illegible]
N	293,487	7-6-VV
N	303,392	
ICO	V7,191	8-10-VV
LAND	114,644	7-13-VV
AY	91,17V	6-4-VV
STAN	107,101	1-18-V[illegible]
STAN	111,V74	10-N-60
MA	V84	12-2-VV
POINTS	727	11-10-60
N	223,248	11-N-VV
DEN	172,369	V-2V-60
EN	186,7VV	2-29-60
UAY	V,192	1-21-V7
UELA	6,968	11-11-V7

PATENT ITEMS ARE LISTED BUT RECORDAL CERT. IS ON HAND

SCHEDULE A

PL'S AND. TO DFDT INTER.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LATHAM CORPORATION,	:	
Plaintiff	:	CIVIL ACTION
versus	:	NO. 67-861
DEEPSOUTH PACKING CO., INC.,	:	DIVISION C
Defendant	:	

: : : : : : : : : : : : : : : : : :

PRETRIAL ORDER

7. The facts established by the pleadings or by stipulation or admission of counsel are as follows:

(6) Prior to 1965 defendant manufactured and sold as one of the three units forming its doweling equipment a woven wire belt. Plaintiff has not and does not charge that defendant's doweling equipment employing such woven wire belt is an infringement of any of the claims of United States Letters Patent No. [illegible].

(1) Defendant withdraws the following paragraphs of its answer as defenses:

Paragraph 14 - The defendant avers on information and belief that each said patent is unenforceable by reason of misuse thereof by and unclean hands and bad faith of plaintiff.

Paragraph 15(g) - Moreover defendant avers on information and belief that plaintiff is estopped from asking for any more than a reasonable royalty under its devoiner patents because of its representations and other actions and inactions during the settlement proceedings of Civil Action #7894 which was recently settled before this Court.

(2) Defendant withdraws the following paragraph of its counterclaim:

Paragraph 22 - The defendant avers on information and belief that plaintiff has had a long history of litigation involving misuse and unfair competition; that plaintiff has been found to have abused its patent-based monopoly in the shrimp processing machinery field by both the Federal Trade Commission and the Court of Appeals for the 5th Circuit; that defendant has just this year settled a vexatious infringement suit (C.A. 7894, filed in November of 1957) brought by plaintiff and which was pending before this Honorable Court for approximately ten years, incurring great expense, and which was thought by defendant to have fully settled all patent claims or rights of plaintiff as against defendant.

THE LAITRAM CORPORATION

versus

DEEPSOUTH PACKING CO., INC.

CIVIL ACTION

NO. 67-861

SECTION "C"

* * * * * * * * * * *

Supplementing the pre-trial order entered this date, IT IS FURTHER ORDERED that:

A. In view of the amendments to the pleadings set forth in Paragraph 14 of the pre-trial order, and in view of the discussion at the pre-trial conference, it is noted that the defendant has withdrawn its request for a separate trial of the issue of laches; the defense of estoppel arising out of the negotiations in the course of the settlement of Civil Action No. 7294 is withdrawn; the defense of laches as pertaining to the tumbler patent (2825927) is withdrawn; and the defense of patent misuse (violation of antitrust laws) is withdrawn.

B. A preliminary hearing for the purpose of witnessing a demonstration will be held at a place to be designated later at 4:00 P.M. on Sunday, April 21, 1968, and a note of evidence will be taken to be made a part of the record of the trial.

Louis B. Claverie, Esq.
Guy W. Shoup, Esq.
Lewis H. Eslinger, Esq.
A. Robert Theibault, Esq.

C. Emmett Pugh, Esq.
Harold J. Birch, Esq.

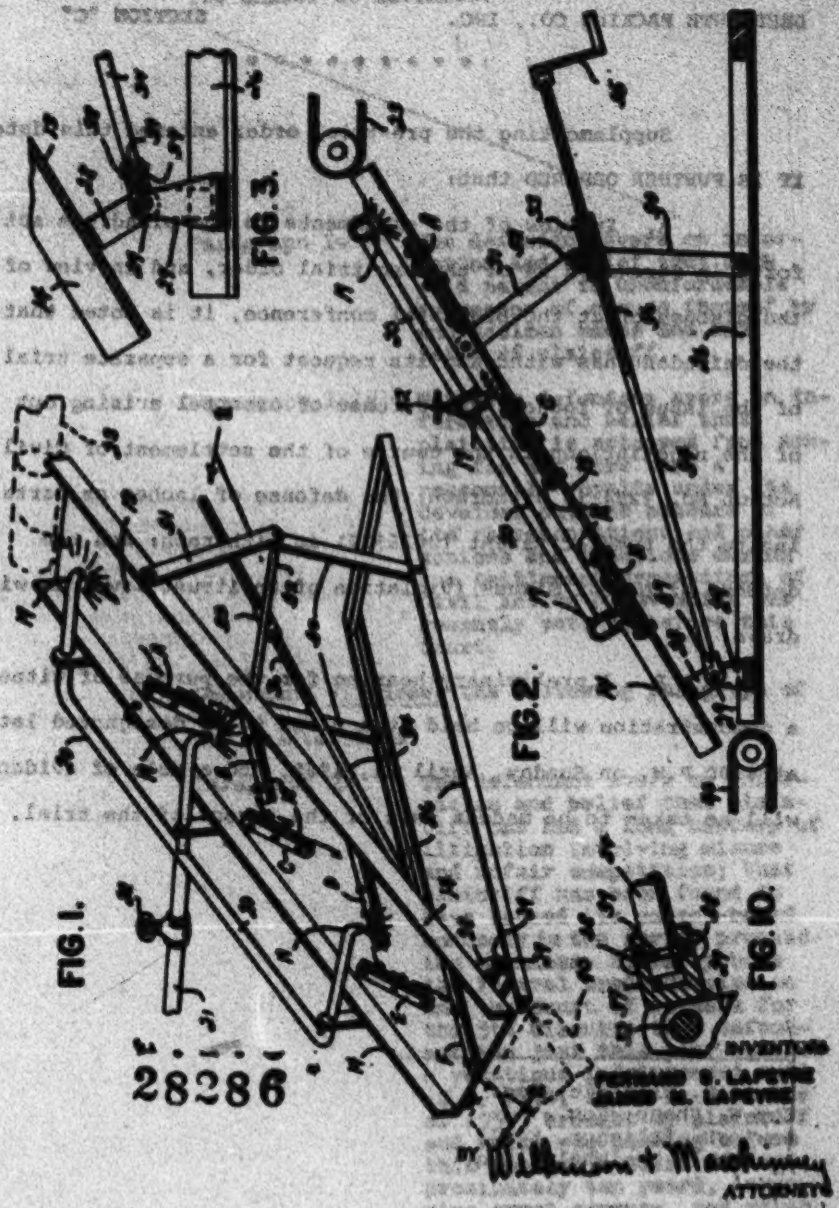
APR 8 1968

PX-1

Nov. 16, 1954 F. S. LAFEYRE ET AL. 2,694,218

SHRUB DEVELOPING MACHINE

Filed Aug. 19, 1952 3 Sheets-Sheet 1



28286

INVENTORS
FERNAND S. LAFEYRE
JAMES M. LAFEYRE

BY Williamson + Mashinney
ATTORNEYS

United States Patent Office

Nov. 16, 1954

FIG. 4.

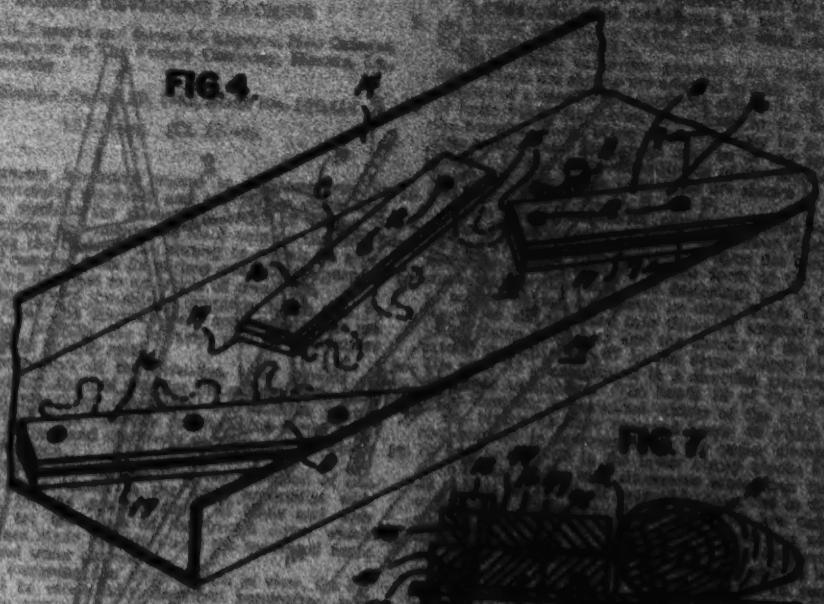


FIG. 7.

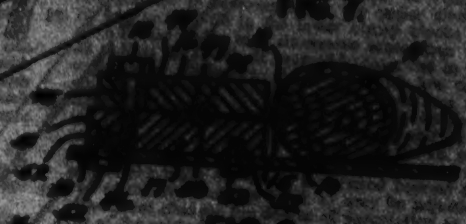


FIG. 5.

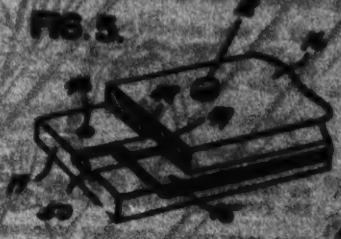


FIG. 8.

FIG. 6.

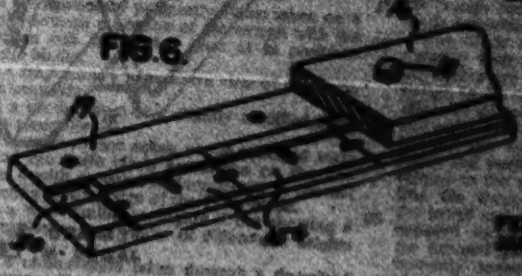


FIG. 9.

Nov. 16, 1954 F. B. LAPEYRE ET AL. 2,694,218

SHRIMP DEVEINING MACHINE

Filed Aug. 19, 1952 3 Sheets-Sheet 3

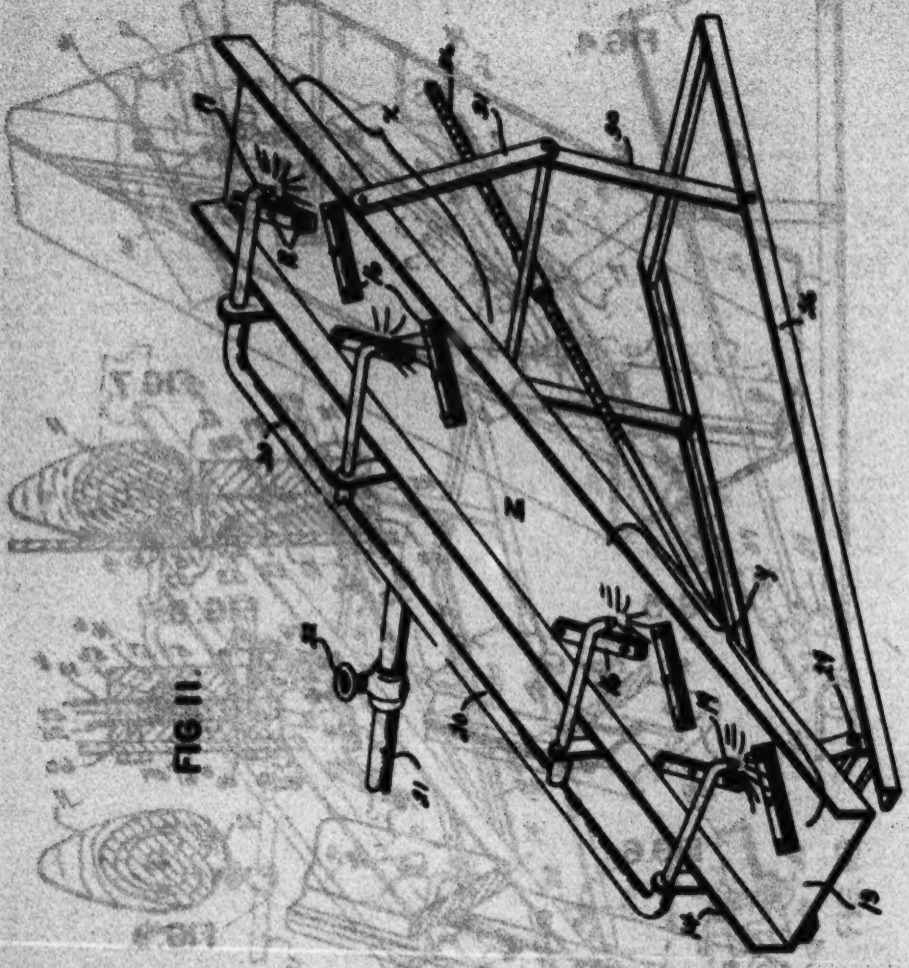


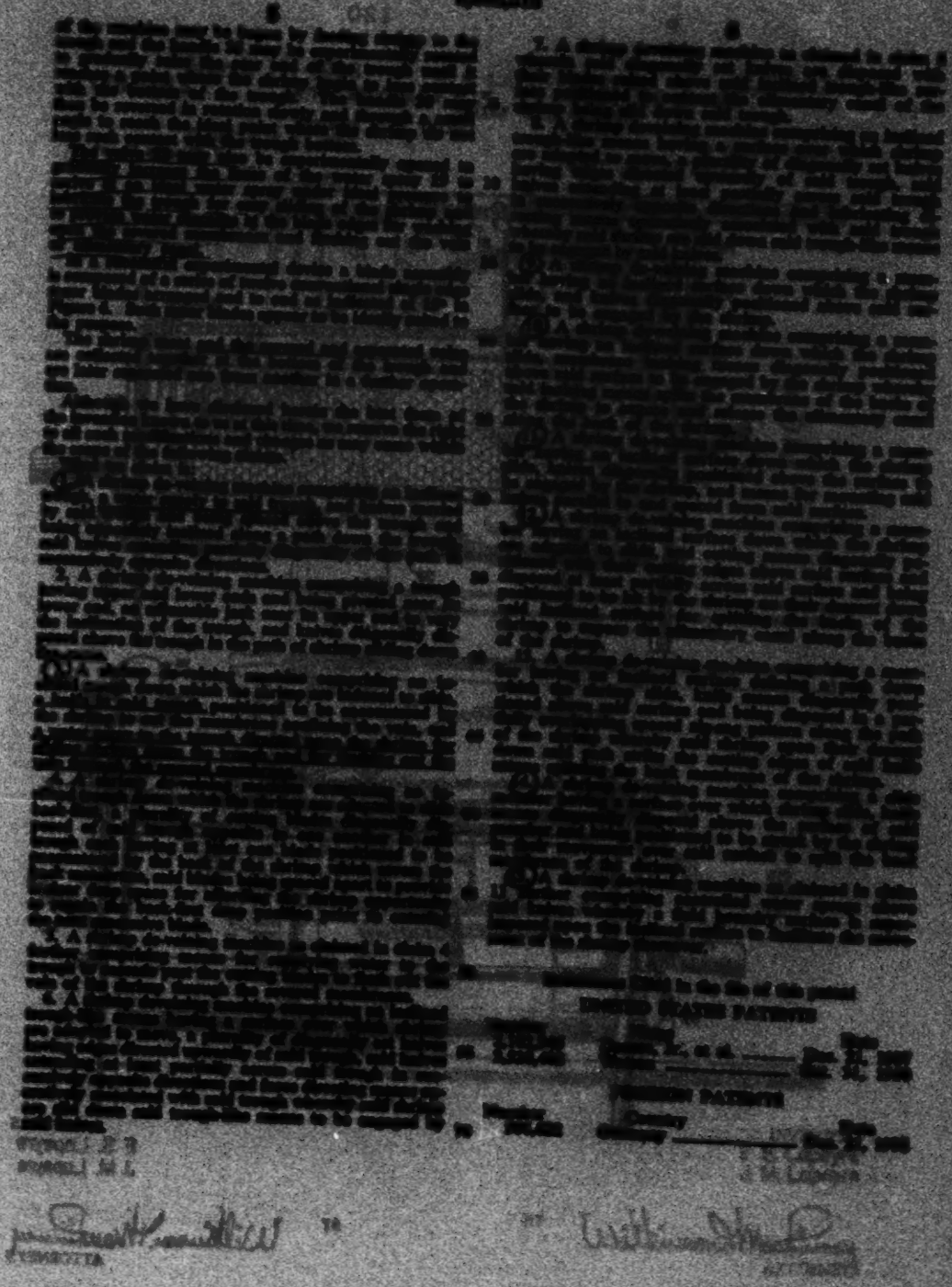
FIG II.

INVENTORS
FERNAND B. LAPEYRE
JAMES M. LAPEYRE

BY Wilkinson & MacKinney
ATTORNEYS

United States Patent Office

[redacted]



9-2

120

March 11, 1958 F. S. LAPEYRE, ET AL. 2,825,927

Filed July 8, 1954

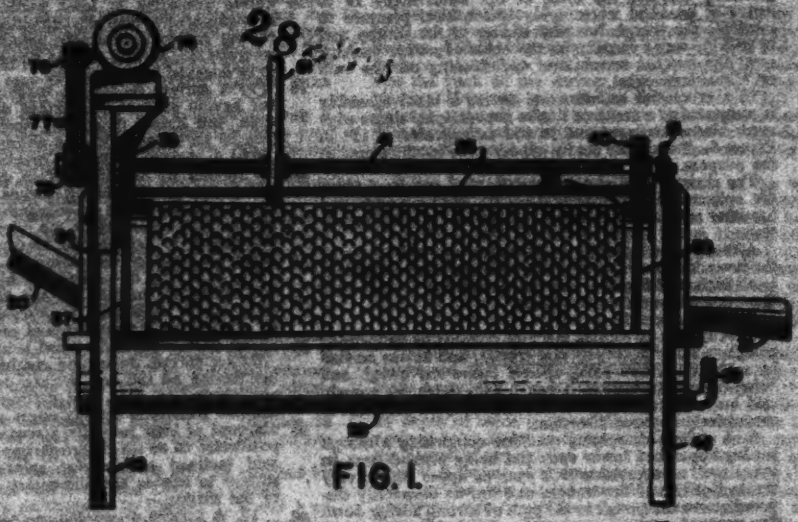


FIG. 1

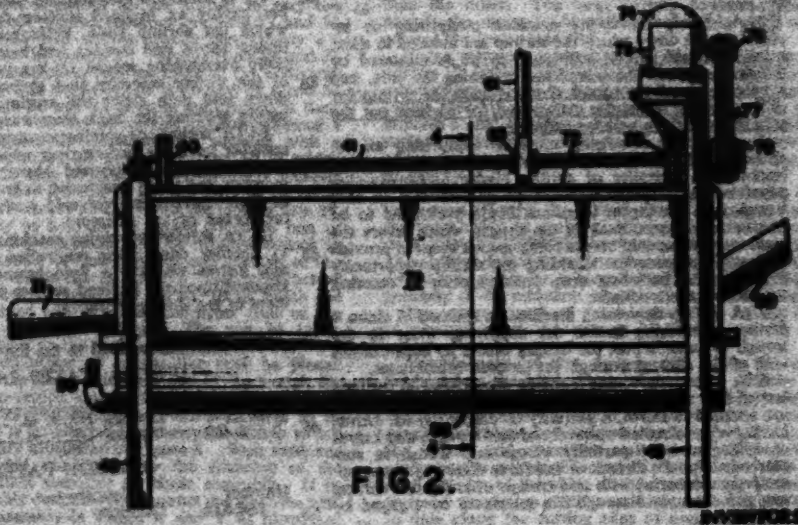


FIG. 2.

INVENTORS
F. S. Lapeyre
J. M. Lapeyre

BY William W. Mac Pherson

ATTORNEY

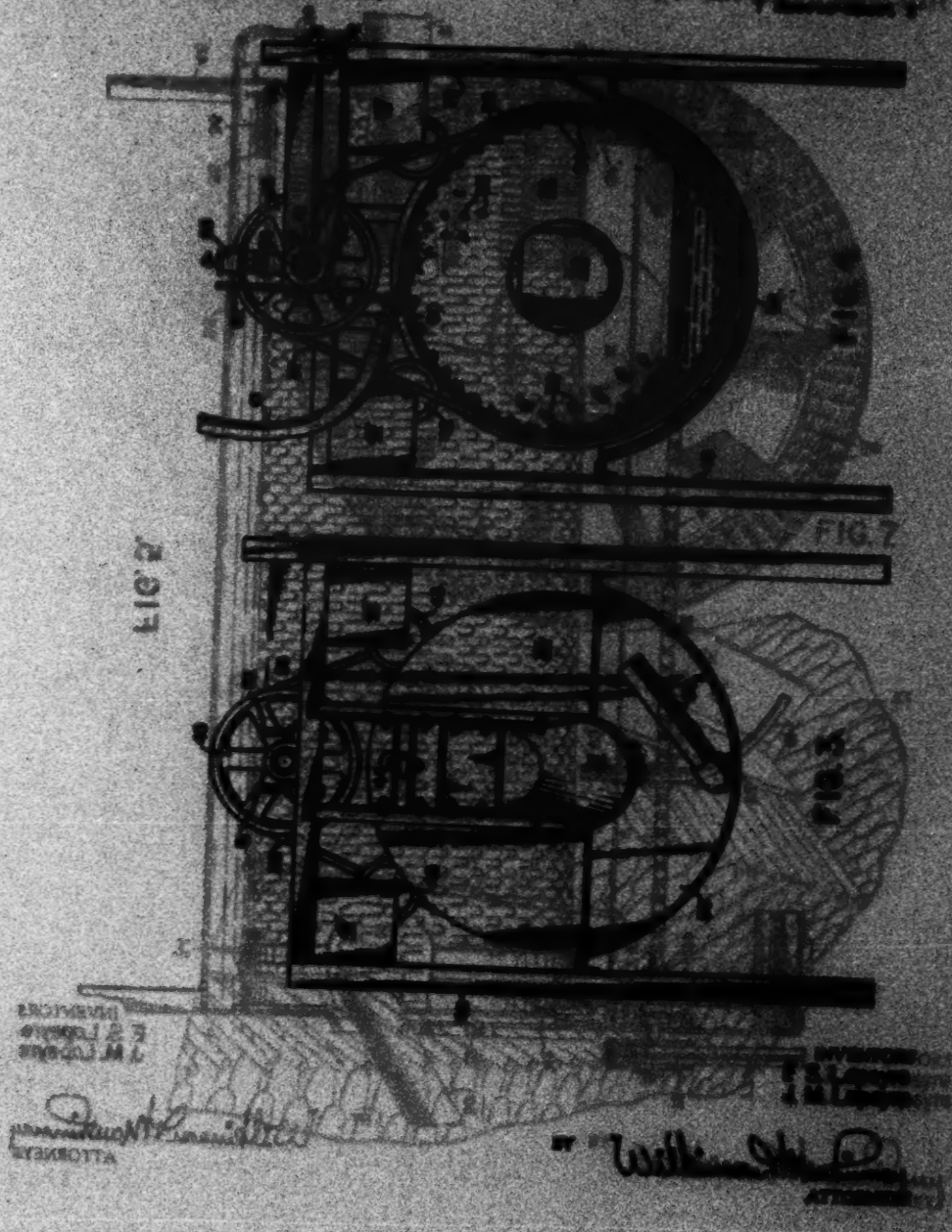


FIG 7
FIG 8

March 11, 1958 F. S. LAFEVRE ET AL. 2,825,527

DEEP WELL HEATER

Filed July 6, 1954 7 Sheets-Sheet 3

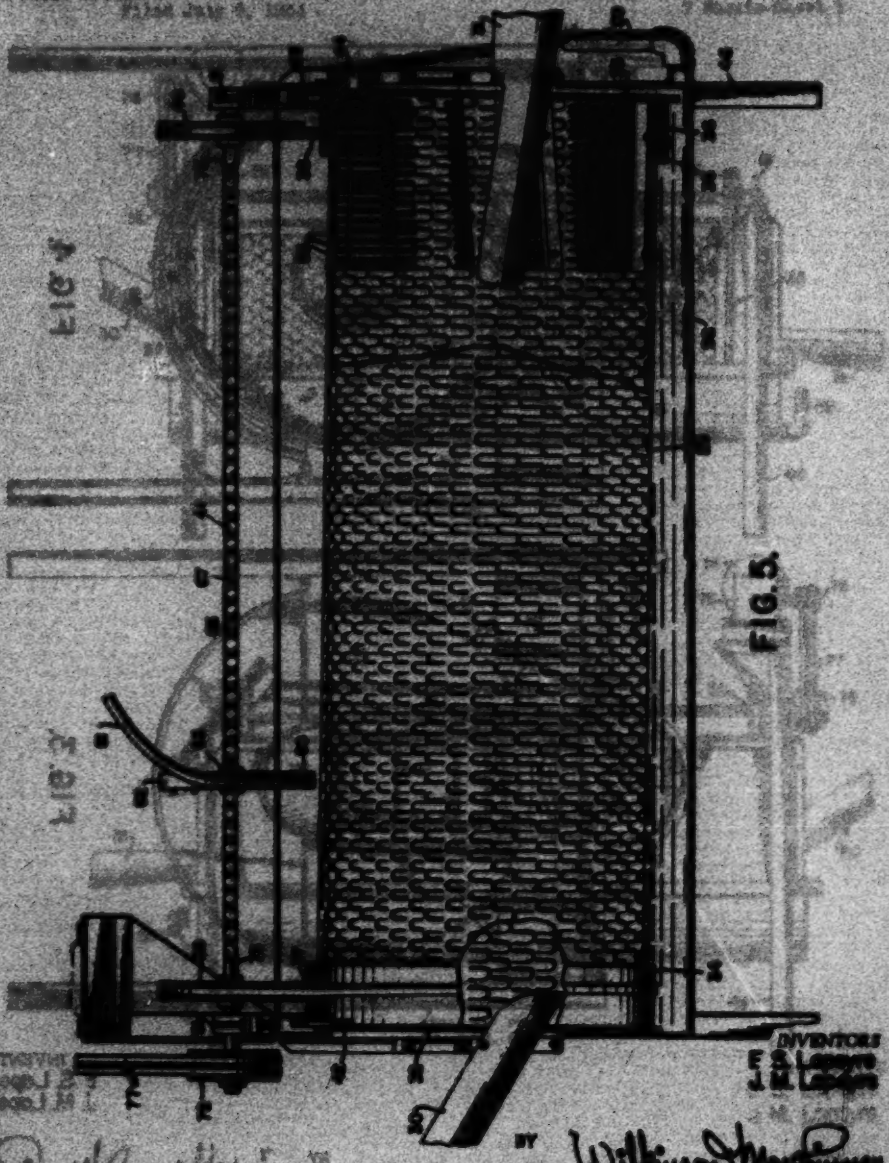


FIG. 5.

INVENTORS
F. S. LAFEVRE
J. M. LAFEVRE

BY Wilkinson & Mawhinney

ATTORNEYS

March 11, 1952

Filed July 6, 1954

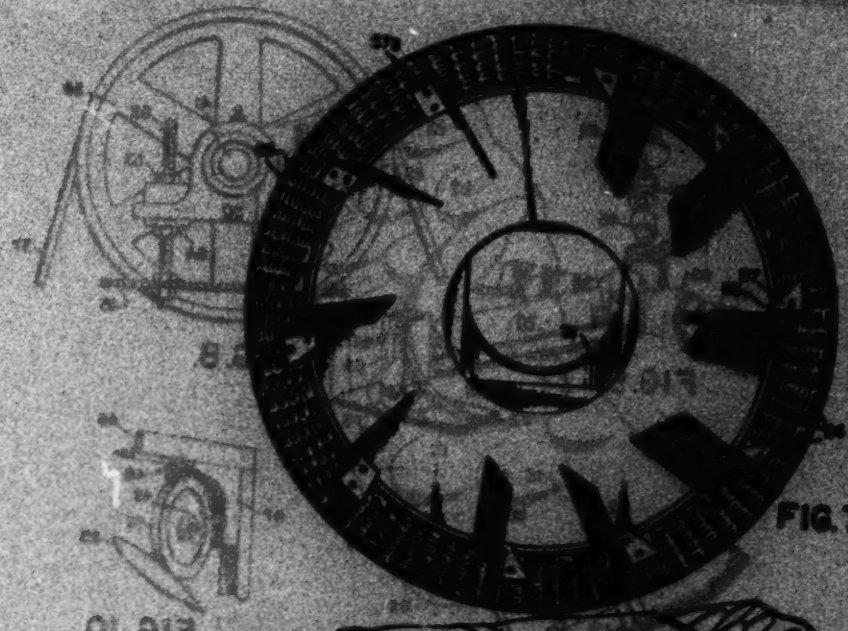


FIG. 7

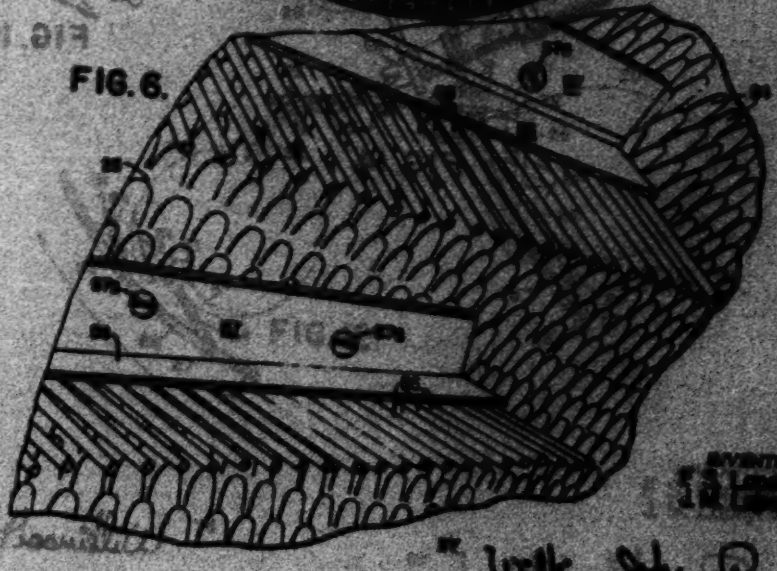


FIG. 6.

March 11, 1958 F. S. LAPEYRE ET AL 2,825,927

SHRIMP VEIN REMOVER

Filed July 8, 1954 7 Sheets-Sheet 5

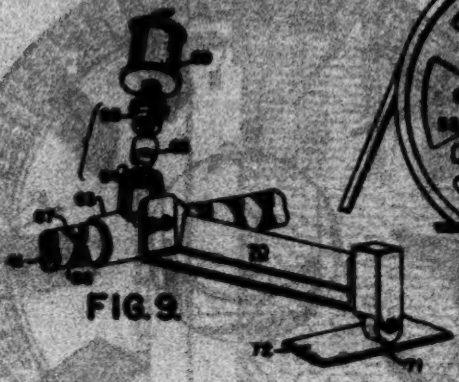


FIG. 9.

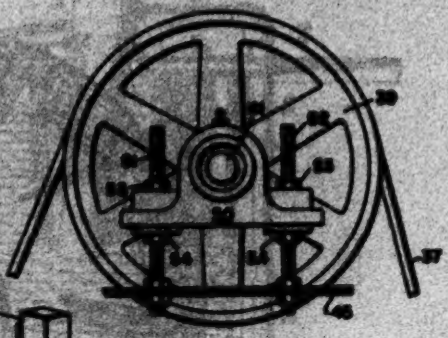


FIG. 8.

FIG. 10.

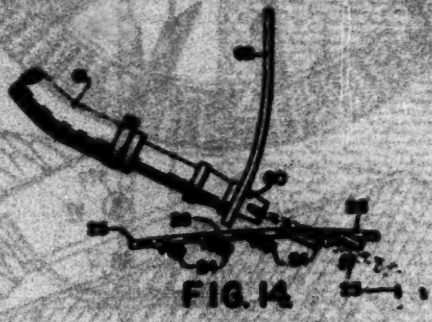


FIG. 14.

INVENTORS
F. S. Lapeyre
J. M. Lapeyre

BY Williamson & Merriam
ATTORNEYS

March 11, 1958 F. S. LAPPING ET AL 2,825,927
Filed July 5, 1954

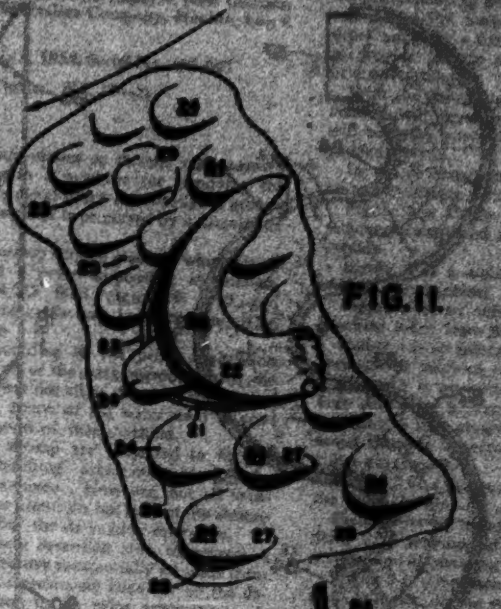


FIG. 11.

FIG. 12.

FIG. 13.

INVENTORS

BY

ATTORNEY

March 11, 1958 F. S. LAPEYRE ET AL. 2,825,927

SHRIMP VEIN REMOVER

Filed July 8, 1954 7 Sheets-Sheet 7

FIG. 15.

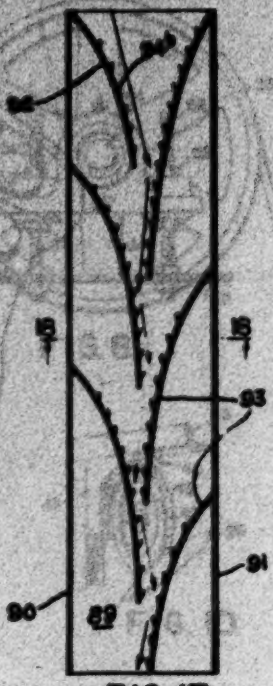


FIG. 17.

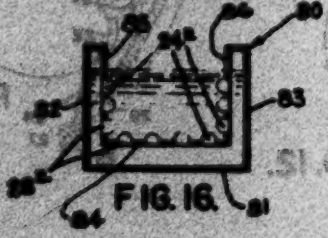


FIG. 16.

FIG. 18.

INVENTORS
F. S. Lapeyre
J. M. Lapeyre

BY Wilkinson Mawhinney
ATTORNEYS

United States Patent Office

2,025,827
Patented Dec. 31, 1935

1

2,025,827

[illegible]

Raymond S. Lanyon and James M. Lanyon, New Orleans, La., assignors to The Pollak Company, Metairie, La., a partnership

Application July 6, 1934, Serial No. 733,642

32 Claims. (Cl. 12—2)

The present invention relates to shoes and more particularly to a machine for removing the sole and welt or stitchdown flange which has brought in the heel of the shoe and is protected by a reinforcing metallic fastener.

This machine is similar to a machine which forms the subject matter of a prior copending application Serial No. 2,694,218 filed August 19, 1932, and entitled Shoe Trimming Machine in the names of the present joint applicants.

In the machine according to the prior application aforesaid substantially all of the back projection of the shoe are entirely cut off by one of the cutting knives and by the action of the upper pad in connection with the operation of that machine.

In cases where the shoes are subjected to further processing such as sanding preliminary to coating, many times are required. However, not all shoes are so reinforced and many places do not require the shoes to further processing after the trimming operation.

Accordingly, the present invention aims to provide a device by means of which automatically all shoes from which backs have previously been cut off on the lasting machine according to the prior application or machine according to the present invention is arranged in series with the cutting mechanism according to Patent No. 2,694,218 so that the present device will remove portions of the shoes that the aforesaid cutting mechanism.

It is a further object of the present invention to provide with the cutting mechanism a pair of knives through the bodies of the shoes which are fed thereto and which are pulled from the shoes.

It is another object of the present invention to provide with the cutting mechanism a pair of knives which are adapted to engage the shoes and which will remove straight and tangent to the shoe at the point of the other end of the welt may be pulled from the shoes.

It is a further object of the present invention to have but one reciprocating element for the knives and the cutting mechanism so that the welt, in other words, shoes described, will be dealt with efficiently by such mechanism.

It is a still further object of the present invention to provide a machine in which after the heels are nailed, the shoes are moved relatively to the cutting knives of the cutting mechanism and the knives are moved relatively to the heels and relatively transverse to the movement of the shoes by which the welt is removed from the body of the shoe. The general aforesaid combination of the invention combines with existing mechanisms.

It will be understood that the shoes are shaped in a preliminary machine which provides the shoes with soles according to Patent No. 2,694,218, so that the shoes are both shaped and ready for the machine according to the present invention.

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It is a still further object of the present invention to provide means for varying the feed of the heels and shoes, which may differ from one to another of the shoes which may come thereto.

The above, and other objects of the invention disclosed in the accompanying drawings wherein like reference characters refer to like parts throughout the several views and in which:

Figure 1 is a side elevation of the machine according to the present invention;

Figure 2 is a similar view taken from the opposite side of the machine;

Figure 3 is an enlarged and detailed view of the machine taken from the discharge end;

Figure 4 is an enlarged vertical transverse section taken through the machine on the line 4—4 of Figure 2;

Figure 5 is an enlarged fragmentary side elevational view with parts broken away and with parts in section, showing a portion of the shoe and two of the cutting knives;

Figure 6 is a perspective view, taken on a reduced scale, showing a section of the shoe and two of the cutting knives;

Figure 7 is a perspective view of the discharge end of the shoe feeding mechanism;

Figure 8 is an enlarged and detailed view of the shoe shank and one of the pulleys with parts shown in section, and illustrating a form of belt adjustment;

Figure 9 is a fragmentary perspective view of the shoe shank with the cutting knives, parts broken away and in section, and power cam in exploded position and with the cooperating arm engaging a cam on the machine frame;

Figure 10 shows a detail sectional view of the knives with one of the rollers or cutters engaged by an upper portion of the shoe;

Figure 11 shows a fragmentary sectional view of the shoe with one of the lips or heels engaged by the cutting knives through the body of a shoe;

Figure 12 is a fragmentary plan view showing a section of the shoe with the lips resting on the abutments of the knives and with one of the lips shown in engagement with one of the knives, the other lip being also illustrated;

Figure 13 is a similar view showing a subsequent position of the shoe in which the lip has pulled with one the body of the shoe with the lip engaged through the body of the shoe with the lip engaged through the body of the shoe with the lip engaged through

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posed shrimp meat, and 21 and 22 represent parts of the protective membrane that has been severed by the machine according to the invention of the prior patent aforesaid. The sand vein or alimentary canal is represented at 23 and in the instance shown has both of its ends still in attachment to the shrimp body 20.

In accordance with the invention a lip 24 is provided upon a suitable supporting member 25, in this instance, a sheet metal drum as hereinafter described. The lip 24 has a free edge which is preferably smooth and rounded as indicated more particularly in Figure 11. The point of attachment or juncture 27 of the lip 24 with its supporting member 25 is such that the lip 24 extends off the supporting member 25 at substantially an acute angle. A perforation 28 is preferably made in the supporting member 25 opposite to the lip 24.

The supporting member 25 may be movable in the direction of the arrow in Figure 12 or the shrimp 20 may be moved in the opposite direction by the movement of water through the drum 25 as later described and the force of gravity acting on the shrimp. Or both supporting member 25 and shrimp 20 may both be movable in relatively opposite directions. In either event the free edges 26 of the lips 24 lead so that in the first instance, as shown in Figure 12, a lip 24 engages membrane section 22 and moves the same out of the way down against the shrimp meat 20 so that further relative movement between the supporting member 25 and the shrimp meat 20 will result in the lip 24 hooking through the loop of the sand vein 23 in the manner indicated in Figure 13. After this engagement further relative movement between the supporting member 25 and the lip 24 will result in pulling the sand vein 23 completely away from its attachment with shrimp meat 20. In this respect the lip 24 acts as a hook-like member to hook into the loop provided by the sand vein 23

Incident to former processing, where the sand vein 23 may have become detached from the shrimp body 20 at one end only, and due to the acute angle, relationship between the lips 24 and the supporting member 25, such sand vein 23 may become wedged in the progressively narrowing gap or mouth between the lip 24 and the supporting member 25. The inner end of this mouth or gap ends in a closed angled crotch. In this aspect, the lips 24 are wedge-like members in their relationship to the supporting member 25 or drum

As many of the lips 24 as desired may be repeated over the surface of the supporting member 25. Where the supporting member 25 is a drum, the lips 24 may be repeated in progressive series around the entire periphery of the drum and throughout its longitudinal extent

Where the drum is rotary, that is mounted for rotatable movement, the direction of rotation will be with free edges 26 of the lips 24 leading and the points of attachment or crotches 27 trailing.

Where the lips 24 are stamped out of the sheet metal 25 of the drum and the perforations 28 are co-extensive with the areas of the lips 24, the gaps or mouths referred to are between the lips and the side edges of the perforations 28 and also between the lips and the blank intermediate portions 29 of the supporting member 25 between adjacent lips 24 which, as shown in Figure 11, are preferably spaced apart laterally In this Figure 11, the sand vein 23 is shown as being caught beneath the lip 24 and being bound by a lip against the side edges of the respective perforation 28 and the two flanking blank intermediate portions 29 of the drum.

Where the supporting member 25 is a drum, the lips 24 are offset inwardly from the peripheral wall of the drum. Where perforations 28 are provided, a stream of liquid may be directed therethrough and against the lips 24 in a cleaning action to remove accumulated sand veins therefrom.

Referring more particularly to Figure 13, while one lip 24, as before stated, has pressed the membrane section 22 out of the way down against the shrimp, an advanced lip 24 has wiped the other membrane section 21 out of the way by folding it back. In Figure 13, the membrane section 21 is shown as substantially folded back upon itself out of the way.

Referring now more particularly to Figures 1–5, inclusive, 30 designates an introductory chute by which the shrimp are fed into the upper end of the drum 25, and 31 represents the discharge chute through which the cleaned shrimp are removed from the drum in a continuous operation.

The introductory chute 30 extends through the upper drum head 32 while the discharge chute 31 extends through the lower drum head 33.

The drum heads 32 and 33 are provided with cylindrical flanges 34 and 35, respectively, in which are produced grooves 36 running annularly around the flanges and preferably of a V-shaped cross-section to receive the upper and lower belts 37 and 38 which are also preferably of a V-cross-section.

The drum 25 is slung in the belts 37 and 38 and has no other support. In other words, the belts 37 and 38 not only drive but also support the drum 25.

The belts 37 and 38 are supported and driven by upper and lower pulleys 39 and 40 which are fast upon a drive shaft 41.

The belts 37 and 38 pull the drum 25 up against upper and lower positioning casters or rollers 42 and 43. There are only two caster or rollers 42 and only two casters or rollers 43. As shown in Figures 3 and 4, these pairs of rollers 42 and 43 are disposed only at the upper side of the drum 25. There are no supporting rollers of any kind below the drum. The function of the rollers or casters 42, 43 is simply to center or position the drum in the frame. The drum 25 must be substantially centered within the frame so as to maintain its proper position with respect to the liquid tank as hereinafter described.

The drum 25 is preferably suspended upon a slight inclination with its higher end at the upper head 32 where the shrimp are fed to the drum and with its lower end at the head 33

The upper positioning casters 42 are carried by an upper frame 45 while the lower positioning casters 43 are rotatably mounted in a lower frame 46. The thrust caster 44 is also mounted in the lower frame 46 so as to receive thereagainst the lower head 33 to prevent the drum or cylinder from exerting the lower frame 46.

One of the casters 42 is shown in Figure 10 as bearing directly upon the peripheral exterior surface of the drum 25. Webs 47 and 48 of the frame 45 receive the shaft 49 of the roller or caster 42. A like support may be provided for the other or lower casters 43.

Referring more particularly to Figure 5, the drive shaft 41 is shown as supported in bearings 50 which are adjustable through the adjusting screws 51 and 52 and the pairs of nuts 53 and 54. The adjusting screws 51 and 52 are secured at their lower ends to the frame 46. A similar adjusting device is duplicated at the lower frame 46. By loosening the upper adjusting nuts 53 and running the lower adjusting nuts 54 upwardly on the screws 51 and 52 the entire drive assembly including the shaft 41 and the two pulleys 39 and 40 may be elevated to take up any slack in the belts 37 and 38 and to maintain the drum or its flanges 34, 35 tightly up against the casters 42, 43. After adjustment, the nuts 53 may be tightened down upon the screws 51 and 52 and against the bearing blocks 50.

Referring more particularly to Figures 5, 6 and 7, scoops are provided at the discharge end of the drum 25 which rotate around with the drum concentrically with the inner portion of the discharge chute 31. These scoops are for the purpose of lifting the treated shrimp to an elevated position in the drum over the receiving end of the discharge chute 31 from which position the

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inclination provides power efficiency in operation in two respects:

First, the inclination is of some effect in promoting the travel of shrimp from the intake end of the drum to the discharge end thereof.

Second, if the drum were level, a cover, such as appears at 44 at the discharge end, would have to be placed at the intake end and there would be a tendency for the drum to underwater totally within the limits allowed by the cover that thereat carries. Successful operation is achieved with the inclined drum and the single thrust cover 44.

The travel of the shrimp from the intake end 29 to the discharge end 31 is promoted by three factors:

First, the motion of gravity in relation to the inclination of the drum.

Second, since the shrimp are in a state of semi-flotation in the water within the drum and since the water overflow is located at the discharge end, there is a current of water running from the intake end to the discharge end which carries the shrimp along with it, particularly when the submerge 60 is introducing water into the drum 25 near the intake end 29 thereof.

Third, the shrimp in a state of semi-flotation tend to spread out or distribute themselves somewhat evenly within the limits of the confining drum 25. Accordingly, sliced shrimp are introduced at one end and removed from the other end, the newly introduced shrimp naturally moved towards the discharge end 31.

The tank 58 preferably is substantially the same inclination as the drum of cylinder 25 so that there is a deeper level of water in the tank 58 at the discharge end than at the intake end.

The key or pawl 65 is free to turn within the socket or pawl housing 66 and to follow the groove track or guide track at the ends of the drive shaft while switching from one groove to the other. The plug 68 which screws into the upper end of the socket or pawl housing 66 prevents excessive upward movement of the key or pawl 65 which might cause disengagement of the pawl from the worm tracks.

The height of the water in the tank 58 may be maintained at a level of from three to five inches from the bottom of the revolving drum or cylinder 25. The machine is operable with a higher or lower level of water but it has been found that the level mentioned is most satisfactory in operation.

The shrimp do not actually float in the water in the drum since the density of the shrimp is slightly greater than that of water. However the difference in density is rather slight so that the sinking of the shrimp in the water is relatively slow and the pressure of the shrimp against the interior of the drum is very slight. The presence of water in the tank and drum is of importance inasmuch as the lessening of the pressure of the shrimp against the drum resulting from the use of water is instrumental in avoiding excessive abrasion of the shrimp as they come in contact with the surface of the revolving drum.

The water jet 59 is preferably of such force as to break the veins into small particles which are then washed through the perforations 28 in the drum 25 into the tank 58 beneath the drum.

Referring more particularly to Figures 15 and 16, a modified form of the device is illustrated in which a stationary trough 80 is provided having a bottom wall 81 and side walls 82 and 83. The walls and the bottom of this trough, which may, for example, be in the form of a perforation, are preferably blank or imperforate in order to retain a body of water which moves through the trough in the direction of the arrows indicated in Figure 15.

Within the trough and spaced from the bottom and sides thereof is a false bottom 84 and false vertical sides 85 and 86 which are suspended in the trough by any

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suitable supports providing liquid circulation below the false bottom 84 and horizontally of the false side walls 85 and 86. The false bottom 84 and side walls 85, 86 constitute an inner trough having an induction end 87 for the liquid and shrimp and a discharge end 88. The false bottom 84 and side walls 85, 86 are provided with perforations 89 and lips 24[a] which have their free edges directed toward the induction end 87. These perforations and lips may be similar to the perforations and lips 28 and 24 hereinbefore described.

In the use of this device, it will be understood that the stationary supporting members or walls for the lips 24[a] past which the shrimp are moving are stationary. Shrimp are carried along the trough and past the perforations 89[a] and lips 24[a] by a current of water circulated by any suitable means through the lower trough from the induction end 87 to the ejection end 88. As the peeled shrimp are propelled by the stream of water past the lips 24[a], the loosened and projecting veins will be caught upon and in the bights of the lips 24[a] and pulled from the shrimp. The circulating water also encountering the lips 24[a] will tend to be diverted through the openings 89[a] so as to break up the veins into small particles and cause the same to move through the perforations 89[a] into the chambers between the inner and outer trough which chambers are also open to the discharge end 88 of the twin trough. The snake-like design of the trough is not essential but this design affords a more varied attack of the lips upon the shrimp veins and is therefore more efficient in operation than a straight trough although the latter is within the contemplation of the invention.

Referring more particularly to Figures 17 and 18, a straight form of trough is illustrated comprised of a bottom wall 89 and street side walls 90, 91 which is adapted to receive peeled shrimp at one end and the deveined shrimp having an exit at the other end of the trough, the peeled shrimp being carried through the trough in the direction of the arrows shown in Figure 17 by a stream of water or the like. Within the trough are two sets of baffle plates 92, 93 which are perforated and carry lips 24[a] having their free ends faced toward the induction end of the trough. These baffles 92, 93 are preferably curved so as to present convex rounded surfaces to the oncoming shrimp, the better to expose the projecting veins to the lips 24[a]. The baffle plates 92, 93 may rest upon the bottom 89 of the trough and the forward ends of the baffles may be in contacting relation with the side walls 90, 91 to which they may be affixed if desired.

The peeled shrimp are carried through the stationary trough and the stationary baffles by a suitably strong current of water or other liquid. The baffles 92, 93 are in overlapping relationship and the curved or convex wall of one baffle will deflect the current and the shrimp from one side to the other of the trough, that is against the convex wall of the overlapping baffle on the opposite side, in a zig-zag like course to insure that the shrimp are subjected to large areas of the lips 24[a] on the baffle plates. The current of water is also preferably sufficiently strong so as to break up into small particles the removed veins and to wash the same through the perforations in the bottom so as to keep the lips 24[a] clear for most efficient action. The shrimp and these particles may be separated in a subsequent operation.

In the form of Figures 15–18, the troughs are horizontal or near horizontal so as to maintain in the trough at all times a body of water or liquid up to a predetermined level.

Although we have disclosed herein the best form of the invention known to us at this time, we reserve the right to all such modifications and changes as may come within the scope of the following claims.

What is claimed is:

(1) In a shrimp vein remover, a supporting member,

a fin or vane at an acute angle from the circumferential surface and having a smooth rounded free edge for engaging beneath the web of a shrimp and for lifting the shrimp between the free end of the vane and the drum, the vane being positioned relatively to the drum so that the free end of the vane is spaced from the drum a distance substantially equal to, or slightly greater than, the thickness of the web of a shrimp with which it is to be used

[illegible] operating the rails of the shrimp. A shrimp vein remover comprising a trough member, a vein engaging member comprising flexible rail support members and flexible rails supported by said support members and positioned to engage the shrimp between the rails and adapted to grasp the body of said shrimp and remove the vein therefrom, the rail support members and vein engaging members being operatively associated with said trough member, and means operatively associated with said vein engaging members and rail support members for relatively moving the shrimp with respect to said rail support members to remove the vein from the shrimp meat.

19. A shrimp vein remover comprising a trough-like member with opposing spaced means operatively associated with said trough-like means for forming thereon a shrimp supporting position for engagement by the trough-like means, and means associated with said trough-like means for effecting relative movement between said trough-like means and the shrimp and substantially transversely of the shrimp for initially effecting engagement of the vein and the trough-like means and finally breaking the engagement of the vein from the shrimp.

20. A shrimp vein remover comprising a shrimp-receiving trough through which peeled shrimp are adapted to be moved, trough-like vein engaging means, shrimp moving means operatively associated with said vein engaging means, and means associated with at least one of said above named means for effecting relative movement therebetween.

21. A shrimp vein remover comprising a double walled trough having liquid chamber between the walls and through which peeled shrimp are adapted to be moved, the inner walls having perforations for permitting passage of the shrimp vein therethrough, trough-like vein engaging means, shrimp moving means operatively associated with said vein engaging means, and means associated with at least one of said above named means for effecting relative movement therebetween, said trough-like vein engaging means comprising perforated sleeves and the inner walls of said trough having liquid discharge openings therein for discharging liquid from the trough in the direction of the movement of the shrimp and propelling liquid.

22. A shrimp vein remover comprising a trough through which peeled shrimp are adapted to be moved having inlet and discharge ends for the shrimp, trough-like vein engaging means, shrimp moving means operatively associated with said vein engaging means, and means associated with at least one of said above named means for effecting relative movement therebetween, said trough-like vein engaging means comprising flexible rails in the trough fixed at the discharge end of the trough and adapted to grasp the body of said shrimp to engage and remove the vein therefrom.

23. A shrimp vein remover comprising a trough, trough-like vein engaging means, shrimp moving means operatively associated with said vein engaging means, and means associated with at least one of said above named means for effecting relative movement therebetween, said trough-like vein engaging means comprising flexible rails in the trough having free ends adapted to engage and remove the vein of the shrimp.

24. A shrimp vein remover comprising an inspection trough having an inlet end adapted to receive shrimp meat by a current of liquid through the trough, trough-like vein engaging means, shrimp moving means operatively associated with said vein engaging means, and means associated with at least one of said above named means for effecting relative movement therebetween, said trough-like vein engaging means comprising perforated sleeves and overlapping baffle plates extending down both sides of the trough and separated from one another to permit passage of the shrimp therebetween, said baffle plates having fins extending in the direction of the inlet-vein end of the trough for catching the loosened veins and pulling the same from the shrimp, the force of the liquid current being sufficient to break the detached veins into small particles and to wash them through the perforations in the baffle plates.

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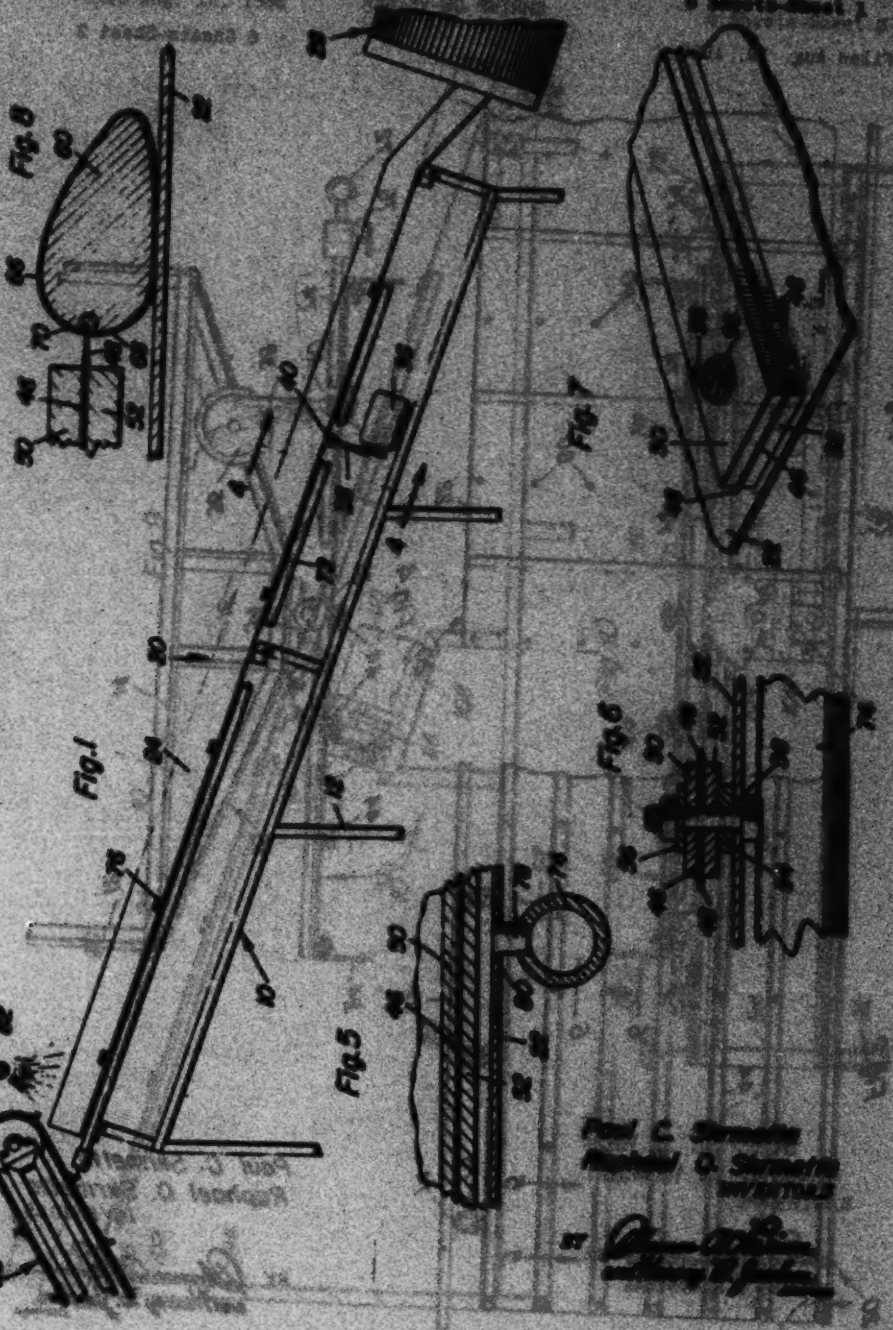

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SHRIMP DE-VEINER

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Fig.3

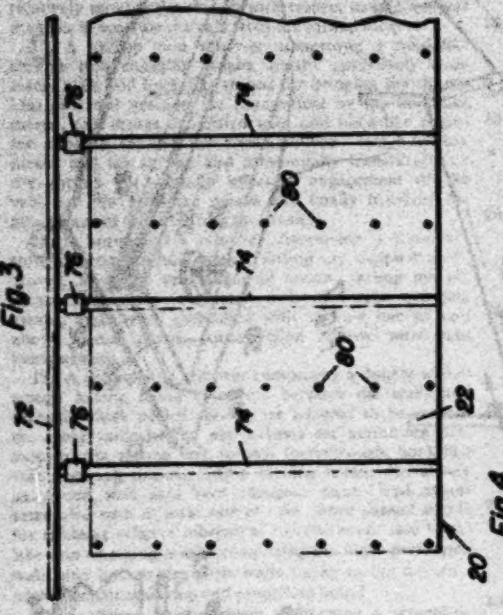


Fig.4

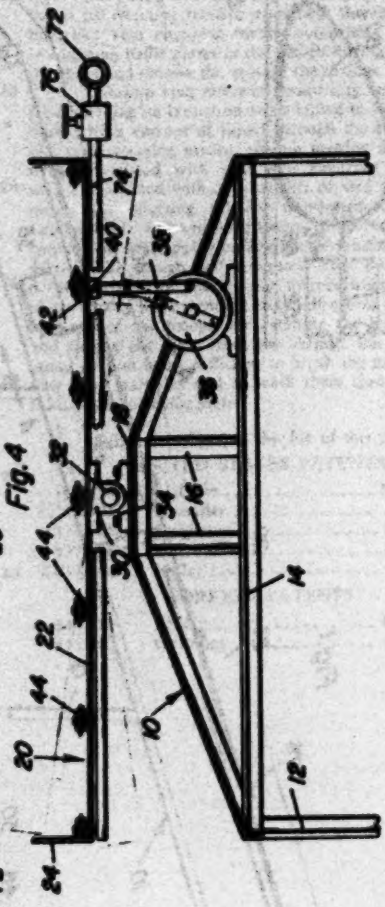
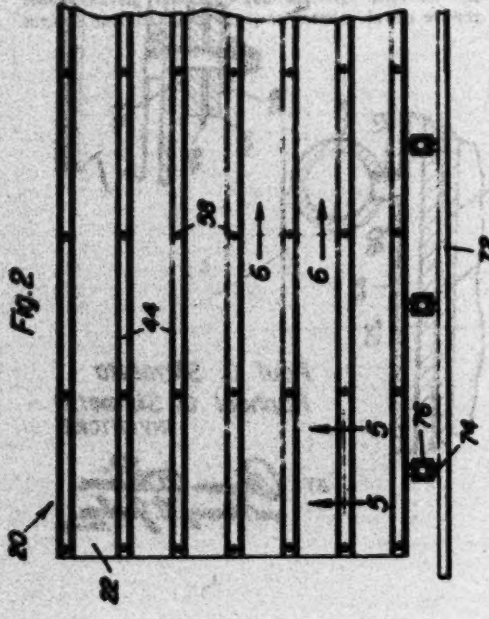


Fig.2



Paul C. Skrmetta
Raphael Q. Skrmetta
INVENTORS

BY

May 1, 1962 P. C. SKRMETTA ET AL 3,031,714

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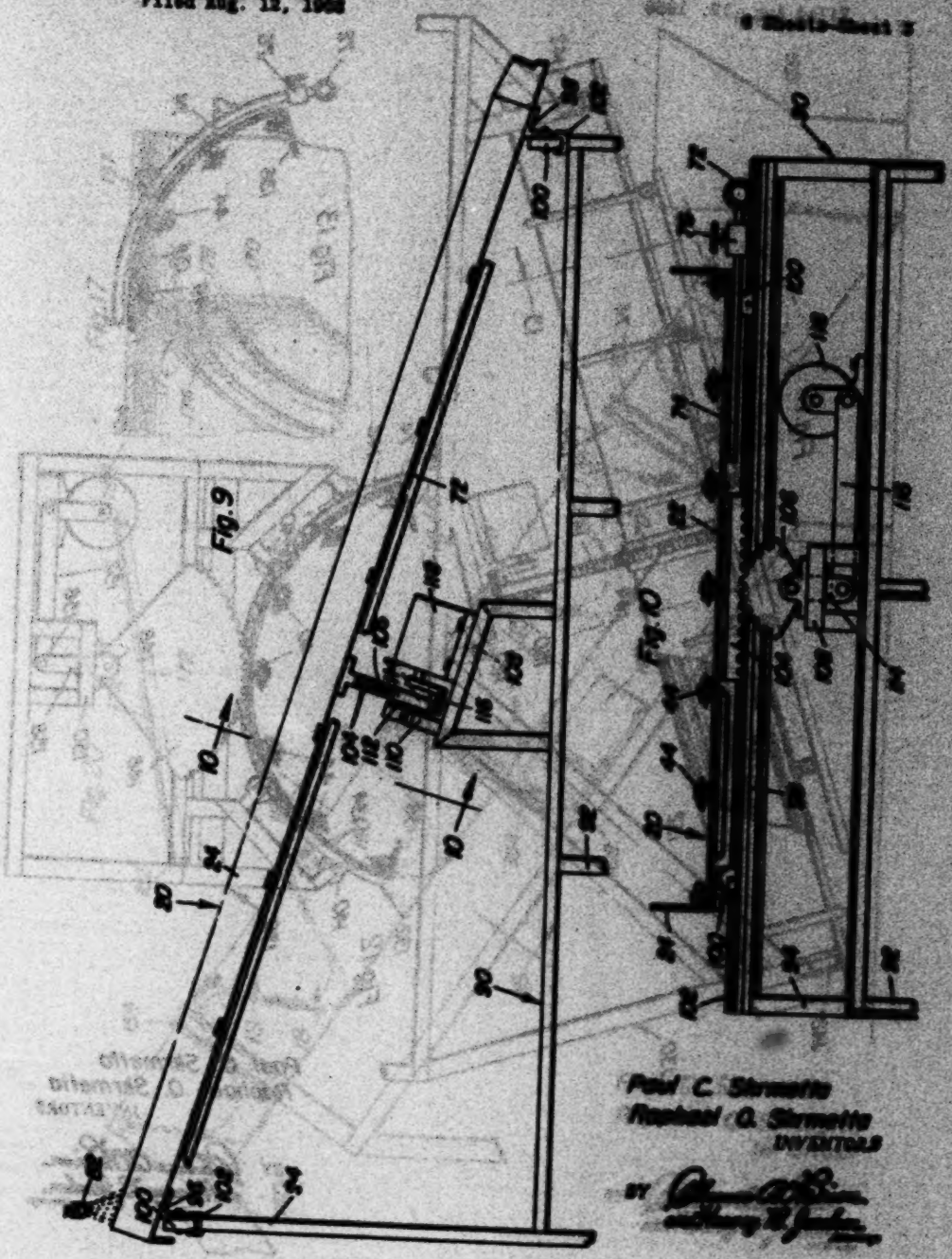

Fig. 9

Fig. 10

Paul C. Skrmetta
Raphael O. Skrmetta
INVENTORS

BY

May 1, 1962 P. C. SKRMETTA ETAL 3,031,714

SHRIMP DE-VEINER

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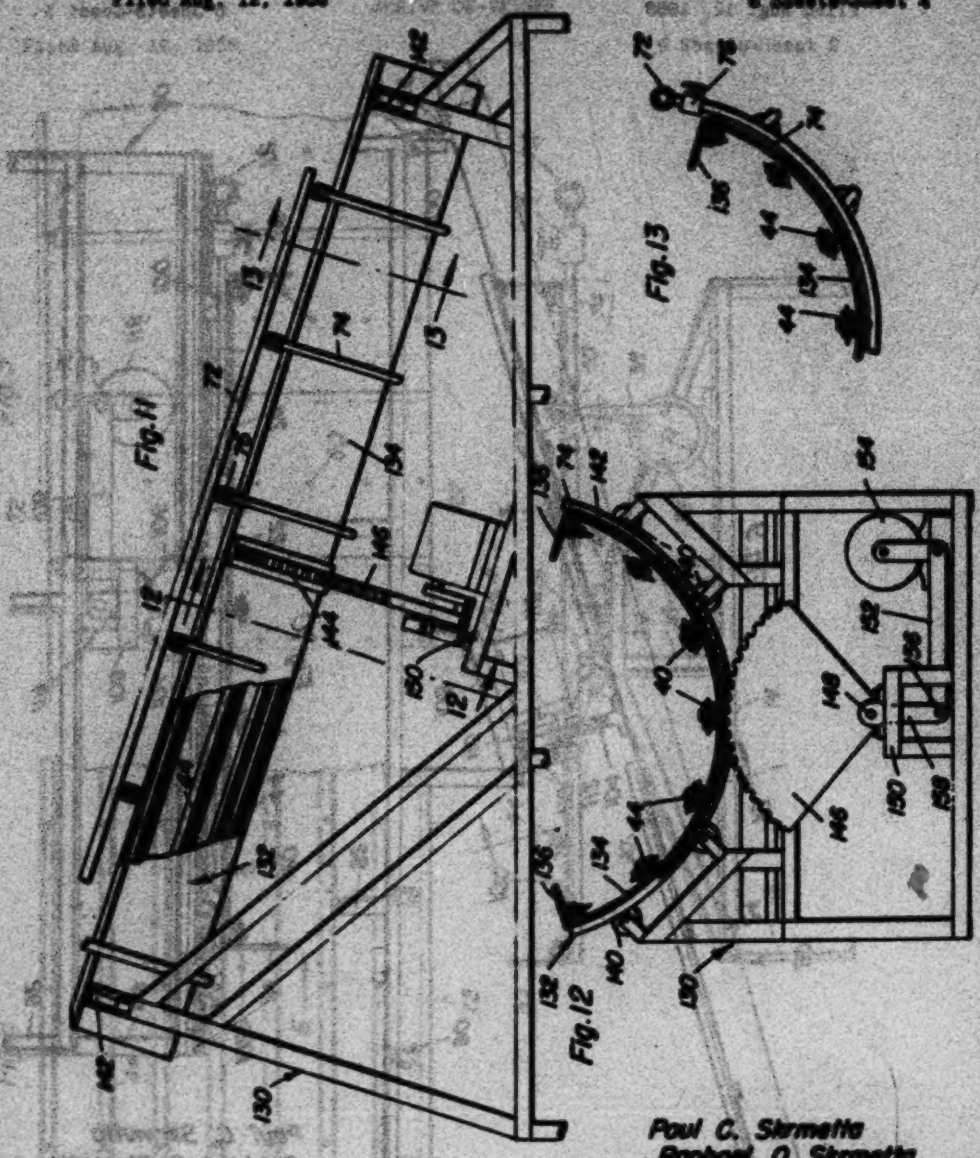

Paul C. Skrmetta
Raphael O. Skrmetta
INVENTORS

BY

United States Patent Office

May 1, 1962

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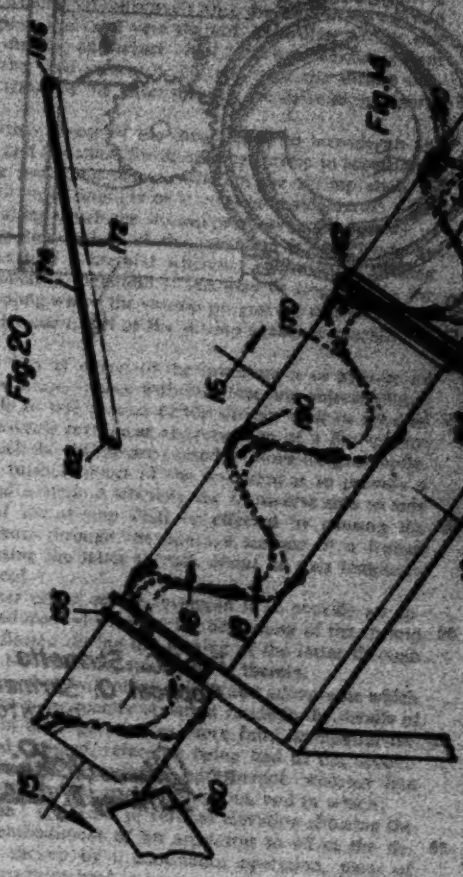

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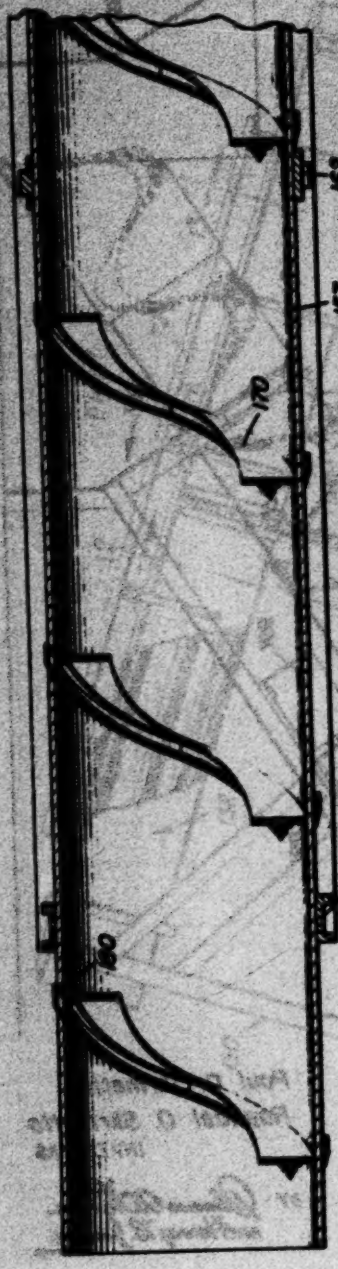

Fig. 15

Fig. 18

Fig. 19

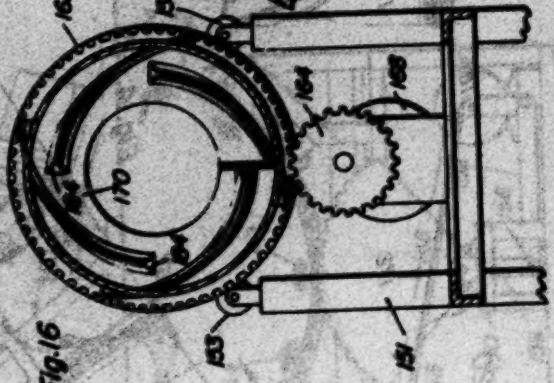

Fig. 16

Paul C. Skrmetta
Raphael O. Skrmetta
INVENTORS

BY [signature] and Henry W. Jenkins
Attorneys

3,031,714
SHRIMP DEVEINERS
Paul C. Bienvenu and Rudolph G. Bienvenu, both of 3206 Lowerline St., New Orleans, La.
Filed Aug. 13, 1958, Ser. No. 754,815
17 Claims. (Cl. 17—2)

This invention comprises a novel and useful shrimp deveining and more particularly relates to a method and means for effectively removing the black vein from shrimp in an improved manner and with a great efficiency of operation.

The primary object of the invention is to provide an apparatus and a method which will facilitate the deveining of shrimp by throwing them back and forth from side to side across a line of travel along which they progress and against a series of knives so placed as to cut the back of the shrimp and expose the sand vein thereof.

A further object of the invention is to provide an apparatus and a method in accordance with the preceding object which shall utilize the influence of gravity either alone or in conjunction with other propelling means to cause the shrimp to progress along a path of travel.

A further object of the invention is to provide an apparatus and method in accordance with the preceding objects which will effectively slit the back of the shrimp and expose the sand vein thereof regardless of the size of the shrimp, and which shall to a considerable extent enable the sand vein to be cleaned from the shrimp during the travel of the latter through the deveining apparatus.

A further object of the invention is to provide an apparatus and a method for deveining shrimp in accordance with the preceding objects wherein the shrimp shall be caused to move intermittently or more side to side across a flat surface along which the shrimp progress longitudinally.

Yet another object of the invention is to provide an apparatus and a method whereby a transverse rocking motion about a longitudinal axis may be imparted to the surface along which the shrimp progress in order to effect the side to side travel of the shrimp against a plurality of knives.

A still further object of the invention is to provide an apparatus in accordance with the preceding objects wherein the side to side motion of the shrimp shall be effected by a transverse rectilinear reciprocation of a flat surface along which the shrimp are caused to move longitudinally.

A still further object of the invention is to provide a means and a method whereby the transverse side to side motion of the shrimp shall be effected by causing the same to pass through the concave surface of a trough while causing the latter to rock about an axis longitudinally thereof.

A further object of the invention is to provide an apparatus and method whereby the deveining of the shrimp shall be effected during the passing of the latter through a rotating barrel having spiral knives therein.

These together with other objects and advantages which will become subsequently apparent reside in the details of construction and operation as more fully hereinafter described and claimed, reference being had to the accompanying drawings forming a part hereof, wherein like numerals refer to like parts throughout, and in which:

FIGURE 1 is a view in vertical elevation showing the preferred embodiment of an apparatus to effect the deveining of shrimp by a continuous operation, parts of the apparatus being broken away;

FIGURE 2 is a fragmentary view in top plan of a portion of the surface of the apparatus along which the shrimp are adapted to longitudinally pass and upon which the shrimp are given a side to side back and forth motion;

FIGURE 3 is a bottom plan view of the arrangement of FIGURE 2 and showing the means for applying a water spray to the surface along which the shrimp are adapted to pass;

FIGURE 4 is a vertical transverse sectional view taken upon an enlarged scale substantially upon the plane indicated by the section line 4—4 of FIGURE 1 and showing in detail the construction and arrangement of the driving mechanism for the shrimp moving surface;

FIGURE 5 is a fragmentary transverse sectional view taken substantially upon the plane indicated by the section line 5—5 and 5'—5' respectively of FIGURE 2 and showing certain details of the knife construction employed with this apparatus;

FIGURE 6 is a fragmentary perspective view showing the manner in which the longitudinal extending knives are mounted upon the floor of the trough along which the shrimp are adapted to pass;

FIGURE 8 is a fragmentary view similar to FIGURE 7 but in vertical transverse section and showing the manner in which the knives are positioned and used to slit the back of the shrimp and expose the sand vein thereof;

FIGURE 9 is a view in vertical elevation, parts being broken away, and showing a second embodiment of apparatus in accordance with the invention, and in which the surface along which the shrimp is adapted to pass is a flat, longitudinally inclined and transversely reciprocating surface;

FIGURE 10 is a vertical transverse sectional view taken substantially upon the plane indicated by section line 10—10 of FIGURE 9 and showing further details of the arrangement and of the operating means for rectilinearly reciprocating the surface;

FIGURE 11 is a view in vertical elevation, parts being broken away of a third embodiment of apparatus in accordance with this invention;

FIGURE 12 is a view in vertical transverse section taken substantially upon a plane indicated by the section line 12—12 of FIGURE 11 and showing the manner in which the trough surface along which the shrimp are adapted to pass is mounted for rocking or oscillatory motion about a longitudinal axis together with a means for oscillating the same;

FIGURE 13 is a detail view taken in vertical transverse section substantially upon the plane indicated by the section line 13—13 of FIGURE 11 and showing the manner in which the water spray may be applied to the surface along which the shrimp are adapted to pass;

FIGURE 14 is a view in vertical side elevation of a fourth embodiment of apparatus in accordance with the principles of this invention and which includes a rotating barrel having spiral knives therein and which is adapted to convey and elevate the shrimp while the sand vein is cut during passage of the shrimp through the device;

FIGURE 15 is a fragmentary horizontal sectional view taken on an enlarged scale substantially upon the plane indicated by the section line 15—15 of FIGURE 14 and showing certain details of the elevator conveyor means and the knife assembly of the device;

FIGURE 16 is a vertical transverse sectional view taken substantially upon the plane indicated by section line 16—16 of FIGURE 14;

FIGURE 17 is a further detail view on an enlarged scale showing the structure and association of the knife assembly and the spiral conveying means of the device;

FIGURE 18 is a detail view taken substantially upon the plane indicated by the transverse sectional line 18—18 of FIGURE 14 showing the preferred fastening means for a blade;

FIGURE 19 is a sectional detail view of the means for fastening the other end of a blade; and

FIGURE 20 is a perspective view of one of the blades employed in the embodiment of FIGURES 14–20.

The basic principle of the method and of the apparatus disclosed herein resides in causing shrimp to progress longitudinally along a supporting surface while causing the shrimp to shift transversely or to be thrown back and forth across the surface to strike longitudinally extending knives and thus slice the back of the shrimp to expose the sand vein thereof during the longitudinal travel of the shrimp along the surface. It has been found, that regardless of the size of the shrimp, when the shrimp slide upon their sides along a surface, that portion of the back of the shrimp beneath which lies the sand vein will be disposed and substantially at the same vertical distance from the surface. Use is made of this characteristic of shrimp to position series of knives extending longitudinally of the surface and at a sufficient distance above the same to cut the back of the shrimp and expose the sand vein.

It is further known that when shrimp are forcefully slid across a surface, especially across one along which they are progressing longitudinally, they will turn over on their side to present their back in a forward position of their transverse sliding motion. Consequently, when shrimp are hurled transversely across a sliding surface, they will almost invariably strike any abutting surface or element along the side of the sliding surface with their backs. Use is made of this characteristic of shrimp to position a series of longitudinally spaced knives at the sides of the surface along which the shrimp are sliding longitudinally, so that when the shrimp are caused to be hurled transversely across the surface, their backs will strike the knives and due to the components of longitudinal and transverse sliding movement, will cause the knives to slice or cut the back of the shrimp and thus expose the sand vein thereof.

The foregoing particular characteristics and properties of shrimp and the above set forth basic principles for utilizing the same in accordance with this invention form essential features of the apparatuses and of the method in accordance with the present invention.

Embodiment of FIGURES 1–8

In the embodiment disclosed in FIGURES 1–8 with particular reference to FIGURES 1 and 4, it will be seen that the apparatus includes a supporting frame 10 including supporting legs 12 together with transversely extending frame elements 14 which in turn support as by standards 16 an elongated or a series of longitudinally spaced platforms 18.

As shown in FIGURE 1, the upper surface of the supporting frame and in particular the platform or platforms 18 thereof are inclined longitudinally of the frame to thus utilize the effect of gravity for the passage of shrimp longitudinally of the apparatus as set forth hereinafter. It will be understood however that this inclination of the frame is not absolutely essential for the purpose of this invention, since other means can readily be employed to effect passage of the shrimp longitudinally of the apparatus, either as a substitute for or to assist the effect of gravity for such passage of the shrimp.

Designated generally by the numeral 20 is a passageway for the shrimp, the same being supported upon the supporting frame 10. In the embodiment of FIGURES 1–8, this passageway 20 is in the form of an open chute or trough having a flat bottom wall 22 together with upstanding marginal side walls 24 extending longitudinally of the trough.

Any suitable feeding means such as an elevating conveyor 26 is provided for delivering shrimp to the open inlet or upper end of the passageway 20, while the lower or discharge end of the latter is operatively associated with a receptacle 28 of any desired type, such as one for cleansing the shrimp or further treating the same.

Adjacent its midportion and upon the underside of the bottom wall 22 of the passageway is provided with depending fulcrum brackets 30 which are secured as by pivots or fulcrum pins 32 to complementary fulcrum brackets 34 which are secured in longitudinally spaced relation upon the platform or platforms 18. These brackets provide a means whereby the passageway is pivotally supported for oscillatory rocking movement about an axis extending transversely of the passageway, between a horizontal inclined position shown in full lines in FIGURE 4 and oppositely tilted rocking position shown in dotted lines in that figure.

Any suitable means may be employed to impart an oscillatory or rocking motion to the passageway 20 about the inclined longitudinally extending axis formed by the pivot pins 32. One satisfactory means, for this purpose, as shown in FIGURES 1 and 4, comprises an electric motor 36 suitably mounted upon the frame members 14 and operatively connected as by connecting rod 38 to a lug 40 as by a pivot pin 42, this lug being suitably attached to the underside of the passageway. Consequently, upon operation of the electric motor, the connecting rod 38 will impart a rocking motion to the passageway along the longitudinal axis of the same, whereby any shrimp traveling longitudinally of the passageway will be thrown from side to side transversely thereof as set forth hereinafter.

Shown at 44 in FIGURES 2 and 4 are a plurality of longitudinally extending knife assemblies disposed in a generally parallel relation and mounted in a particular manner upon the bottom wall 22 of the passageway in a manner and for the purpose set forth hereinafter. These knives are spaced from each other laterally a suitable distance to provide chutes or channels therebetween along which shrimp are adapted to travel longitudinally and be shifted or hurled transversely and laterally thereof from one knife assembly to the other.

The knife assembly 44, see FIGURES 5–8, comprises a flat plate-like blade 46 having its opposite longitudinally extending edges provided with sharpened knife surfaces as at 48. The blade 46 is clamped between upper and lower elongated flat-plate-like clamping blocks 50 and 52 respectively. As shown in FIGURE 6, a spacer collar 54 may be disposed beneath the lower block 52, while a washer or the like 56 may be disposed above the upper block 50. A fastening bolt 58 extends through suitable aligned apertures in these members and through the bottom wall 22 to thereby rigidly clamp the knife assembly in place, with the blade 46 thereof disposed at the desired vertical distance above the bottom wall 42 by means of the properly proportioned spacers 54 and the appropriate thickness of the lower clamping block 52.

If desired, in some instances, the spacers 54 may be omitted and the lower block 52 may be directly clamped upon the bottom wall 22 as shown in FIGURE 7.

As so far described it will now be understood that as the shrimp are discharged from the elevating conveyor 26 to the upper end of the inclined passageway, the same will pass down between the channels formed by pairs of adjacent knife blade assemblies. As the bottom wall 22 of passageway 20 is rocked by the means previously described, the shrimp will be thrown or cast laterally from side to side of the channels or troughs and will be caused to strike first one and then the other of the adjacent knife assemblies 44. As shown in the detail view of FIGURE 8, when the shrimp is hurled sidewise upon the bottom wall 22, it will naturally assume a position in which its back approaches the adjacent knife assembly first. Consequently, since the knife blade is positioned at the proper elevation, the shrimp will strike its back against the knife assembly which in turn will sever or slice the back and expose the sand vein. The latter lies closely adjacent to the back of the shrimp. Shown in FIGURE 8, the shrimp 60 has a shell or hull 62 thereon, and the back 68 of this hull is closely overlying the sand vein 70.

The repeated impacts of the shrimp as the same is

thrown from side to side of a channel and the yieldable contacts of the sharp knife edges 48 against the back of the shrimp will during the passage of the shrimp longitudinally of the channel effectively serve to open the back and expose the meat vein. The repeated lurching of the shrimp will very effectively in conjunction with the repeated penetration of the knife blades into the region of the meat vein effectively remove the latter. In any event, the shrimp is in the proper condition when it reaches the device 20 to have the meat vein washed therefrom by water, by further jostling or by any other desired manner.

In order to contribute to the passage of the shrimp along the bottom wall 22 of the passageway, the same is kept well lubricated with water. For this purpose, there is securely mounted in any suitable manner upon the passageway 20 a longitudinally extending water supply pipe 72 having, as shown in FIGURES 2 and 3, a plurality of laterally extending branch pipes 74 each of which is provided with a manual control valve 76. These branch pipes 74 underlie the bottom wall 22 of the passageway and are provided with upwardly extending nozzles 78 which extend through apertures 80 in the bottom wall as shown in FIGURE 3. This water is delivered in the form of a film which bubbles over and thus lubricates the entire surface of the bottom wall 22. For this purpose apertures 80 are disposed over substantially the entire area of the bottom wall in suitably spaced relation to each other. Under this lubrication, the surface of the bottom wall is maintained in a very slick condition thereby facilitating sliding of the shrimp longitudinally of the inclined passageway and the back and forth lateral travel of the shrimp thereacross in response to the oscillation of the passageway previously mentioned.

Still further if desired, a water spray 82 may be disposed above the upper or inlet end of the passageway to cause a stream of water to flow downwardly along the same.

In some instances, sufficient water may be discharged by the nozzles 82 and the spray therefrom may be so directed as to in itself constitute a force which will propel the shrimp longitudinally of the passageway even if the latter has its axis horizontal rather than in an inclined position.

Embodiment of FIGURES 9 and 10

FIGURES 9 and 10 show a very similar construction to that of FIGURES 1–8 except that instead of a transverse rocking motion, there is imparted a transverse rectilinear reciprocation to the passageway. In this embodiment there is shown a supporting frame designated generally by the numeral 90, the same including supporting legs 92 with upstanding standards 94 at the opposite ends thereof.

Carried by the standards are transverse or cross members 96 at the upper end and 98 at the lower end. The same carriage construction 20 previously described is employed in this embodiment, and consequently the same numerals have been applied to the elements of the carriage construction, and to the knife assemblies extending longitudinally thereof.

However, the passageway 20 is provided with supporting rollers 100 which ride upon transversely disposed channel members 102 carried by the cross members 96 and 98 and comprising tracks mounting the passageway 20 for transverse reciprocation upon the frame.

Extending transversely of the underside of the passageway and intermediate the ends of the latter there is provided a depending rack 104 which registers with an arcuate sector plate 106.

Secured to a suitable supporting stand 108 is a bearing assembly 110 in which is journaled a fulcrum pin or axle 112 which pivotally mounts the sector plate 106. Depending from the sector plate is a lever arm 114 to which is pivotally connected the connecting rod 116 which in turn is operatively connected to a source of power such as electric motor 118. It will thus be apparent that as the

motor is operated, oscillation of the power plate 106 will effect rectilinear reciprocation of the passageway 20 and also impart a lateral shifting to the shrimp as the same pass down the channels between the pairs of knife blade assemblies 46. As in the preceding embodiment, the same means is provided for supplying water to the bottom wall by means of the longitudinally extending header 72, together with the transverse branch pipes 74 and manual control valves 76, and the same nozzles assembly (not shown) together with the overhead spray nozzle assembly 82.

Except for the means which impart lateral shifting movement to the passageway 20 and the manner of supporting the latter for reciprocal movement, incorporation, the operation of this form of the invention is identical to that previously described, and the passageway 20 may be either inclined as shown or may be horizontally disposed with a water spray of other means being incorporated for causing longitudinal passage of the shrimp along the same.

Embodiment of FIGURES 11–13

The embodiment of FIGURES 11–13 is similar to both of the previously described embodiments. It includes a supporting frame assembly designated generally by the numeral 130 upon which is rockably mounted the elongated longitudinally extending passageway 132. In this embodiment the passageway comprises a semi-cylindrical plate 134 comprising a bottom wall having marginal side walls 136. The bottom wall and side walls thus define a trough or chute which is arcuate in cross section. As in the other embodiments, longitudinally extending knife assemblies 46 are secured to the bottom wall and channels or shrimp receiving and shrimp discharging troughs are provided between adjacent knife assemblies. Any suitable, place, as adjacent the ends of the passageway 20, the supporting framework 130 is provided with supporting rollers 140 which engage and are received in track members 142 which may comprise channel members, in order to support the passageway for rocking movement transversely about a longitudinally extending axis. An arcuate rack 144 is secured to the midportion and underside of the passageway, the teeth of which engage with a sector gear 146 which is journaled as at 148 upon a suitable supporting structure 150. A connecting rod 152, driven from an electric motor 154 or other suitable source of power, is pivotally connected as at 156 to the lower end of a depending lever arm 158 which is rigid with the sector plate 146.

The same water providing means may be employed as in the previous embodiments, including the longitudinally extending header 72, the manual control valve 76 for each of the branch conduits 74, while an overhead spray, not shown, may likewise be provided as desired.

The operation of this form of the invention is identical with those previously described except that the passageway has a rocking movement and is semi-cylindrical or trough shaped.

Embodiment of FIGURES 14–20

In the embodiment of FIGURES 14–20, the supporting frame 161 rotatably supports thereon in any desired manner, as for example by means of supporting rollers 153 of FIGURE 16 which ride in the circumferentially extending channel members or tracks 155 of FIGURE 15, to thereby rotatably support an elongated sleeve or barrel 157 which is open at both of its ends and constitutes the passageway through which the shrimp are adapted to pass.

In this embodiment, the open lower end of the barrel communicates with the interior of a hopper 159 into which shrimp may be discharged in any desired manner for treatment by the apparatus. At the open upper end of the barrel there is provided a chute 160 or other means to receive the shrimp which have been elevated

and de-reloaded during such upward travel by the rotating passageway 157.

Continuous rotation rather than reciprocation or oscillation is imparted to the barrel. For this purpose, there is provided an external ring gear 162 secured to the barrel intermediate its ends in any convenient position and which engages with a driving gear 164 and driven by a source of power such as an electric motor 166. A speed reduction gear assembly 168 may be operatively interposed between the motor and the driving gear 164 if desired.

A helical or spiral blade 170, see FIGURES 14, 15, 16 and 17 in particular, is secured to the inside wall of the barrel or passageway 157, being perpendicularly attached thereto as shown in FIGURE 7. This spiral or helical blade serves as an auger screw or spiral conveyor which serves during rotation of the barrel about its longitudinal axis to advance the shrimp up the inclined barrels and eventually discharge the shrimp from the open upper end of the same into the chute 160.

Referring now especially to FIGURE 17 it will be seen that there are provided helical or spirally shaped knife blades 172 having knife edges 174 and which are clamped between a pair of clamping members 176 and 178, the latter being secured to the upper or lifting face of the auger or elevator blade 170. It will be understood that the edges 174 are maintained at a proper spaced distance from the internal wall of the barrel or passageway 157 so that upon rotation of the barrel, as the shrimp are pushed upwardly by the elevating screw 170, they will be appropriately engaged upon their backs by the knife edges 174 to thus slit the back of the shrimp and expose the sand vein in the same manner as the preceding embodiments.

It will be observed that during rotation of the barrel, the sliding and lifting action of the blades on the shrimp will slit the same as well as lift the shrimp so that the shrimp will be repeatedly lifted and dropped from the upper portion of the cross sectional area of the barrel to the lower portion of the same to be engaged by a successive portion of a blade or blades.

A single blade member 172 may be provided throughout the length of the barrel, but preferably a series of separate endwise disposed blades are provided.

As in the preceding embodiment a water spray is provided, which in this instance is preferably introduced by any suitable means, not shown, at the open upper end of the barrel and travels by gravity downwardly along the length of the same, the rotation of the barrel serving to distribute this water in a uniform film over the entire internal surface of the same.

Although a single continuous spiral or helical blade and elevator screw 170 is provided, it is preferred as shown in the drawings to provide a series of discontinuous knife elements 172, as will be especially apparent from FIGURE 16. The arrangement is such that as the shrimp travels along a knife edge, with its back being sliced by the same, it will drop off the open end of the blade with which it is engaged and back upon the next following blade. This serves to position the shrimp in different attitudes for engagement by successive blades, thereby insuring an efficient and effective cutting action of the device upon the shrimp during the lifting of the latter.

Although the conveyor blade 170 is a continuous helix extending between the two ends of the barrel 157, the slicing blade assembly preferably comprises a plurality of blades 172 disposed in endwise spaced positions upon the conveyor blade 170.

Each knife blade 172 extends through about 90° of the circumference of the barrel 157 and is slidably insertable endwise through a slot 180 in the barrel and is slidable between the clamp and guide members 176 and 178 on the blade 170. At its inward extremity, each knife blade 172 has a shouldered recess 182, see FIGURES 19, 20, which is seated beneath a retaining bracket 184, see FIGURES 19, 16, on the blade 170. The other knife blade extremity has an aperture 186 which is secured by a fastener 188 to a lug 190, see FIGURE 18, on the exterior of the barrel 157 adjacent the slot 180.

As will be seen from FIGURE 16, the forward end of each knife blade overlies the outward end of an adjacent knife blade. Consequently, as the shrimp move upwardly in the passageway or barrel 157 they will slide along the knife blades 172 and drop from the end thereof to the next adjacent knife blade. These repeated impacts and sliding action upon the blades will effectually slice the back of the shrimp and cut out or loosen the sand vein.

This construction obviously facilitates installation and servicing of the knife blades.

Method of Operation

In the various forms of apparatus hereinbefore set forth it will be observed that the same basic principle or method of operation is present in all. Thus, as the shrimp moves or is caused to move along an elongated path of travel, the shrimp are repeatedly shifted or tumbled or thrown or hurled back and forth transversely and across this path of travel to cause the back of the shrimp to strike first one and then another knife element appropriately positioned to slice open the back of the shrimp and expose the sand vein therein. This general mode and method of operation is effected by various structures and by various specific methods. Thus, in the embodiment of FIGURES 1–8, the shrimp are caused to move longitudinally on a flat surface, and to be hurled from side to side against longitudinally extending knives by a rocking of the surface transversely by the longitudinal axis. In the embodiment of FIGURES 9 and 10 the same result is obtained except that the shrimp are hurled from side to side by a rectilinear transverse reciprocation of the passageway along which the shrimp slide. In the further embodiment of FIGURES 11–13, the shrimp are hurled from side to side against longitudinal extending knives by being caused to pass longitudinally along a concave trough which is rocked about a longitudinal axis.

Finally, in the apparatus of FIGURES 14–20, the shrimp are tumbled as they advance upwardly along an incline by a spiral conveyor or screw and are engaged by spiral knives extending spirally of the continuously rotating passageway.

From the foregoing, the construction and operation of the device will be readily understood and further explanation is believed to be unnecessary. However, since numerous modifications and changes will readily occur to those skilled in the art, it is not desired to limit the invention to the exact construction shown and described, and accordingly all suitable modifications and equivalents may be resorted to, falling within the scope of the invention as claimed.

What is claimed as new is as follows:

1. A machine for de-veining shrimp comprising means forming an elongated passageway having a surface along which shrimp are adapted to longitudinally slide, a knife assembly extending longitudinally of said passageway and extending along at least one marginal edge of the latter and defining a continuous side wall to retain shrimp upon said surface, means mounting said knife assembly upon said passageway and at such distance from said surface that said knife assembly will slice the back of a shrimp striking thereagainst for uncovering the sand vein of the shrimp, means operatively associated with said passageway for causing a to and fro motion of the passageway transversely of its longitudinal axis whereby to shift shrimp progressing longitudinally of said surface transversely against said knife assembly.

2. The combination of claim 1 including means operatively associated with said passageway for delivering water to said surface.

3. The combination of claim 1 including means operatively associated with said passageway for delivering water to said surface and substantially uniformly over substantially the entire area of the latter.

4. The combination of claim 1 wherein said surface of said passageway is substantially flat.

5. The combination of claim 1 wherein said surface of said passageway is substantially flat and means including said passageway for rocking movement about an axis of oscillation extending longitudinally of said passageway.

6. The combination of claim 5 wherein said surface of said passageway is substantially flat, and means mounting said passageway for oscillatory reciprocation transversely of the longitudinal axis of said passageway.

7. A shrimp de-veiner comprising means forming a passageway having an elongated support surface over which shrimp are adapted to move longitudinally, a plurality of knife assemblies disposed longitudinally of said surface and extending continuously along the marginal edges of said surface to define side walls for retaining shrimp upon said surface, means mounting said assemblies and said passageway, each knife assembly having a knife blade disposed a fixed distance from said surface such as to slice the back of a shrimp passing and moving thereon and expose the sand vein thereof, adjacent knife assemblies forming shrimp receiving and de-veining channels therebetween, means operatively associated with said passageway for causing movement of shrimp longitudinally of said passageway and of said knife assemblies and back and forth shifting of shrimp transversely of said channels and against said knife assemblies.

8. The combination of claim 7 including means operatively associated with said passageway for delivering water into said channels beneath said knife assemblies and upon said surface.

9. A shrimp de-veiner comprising a longitudinally extending trough having a bottom surface along which shrimp are adapted to move, a pair of knife blades disposed in opposed side by side relation and extending longitudinally of said trough, means for supporting said blades in fixed vertically spaced relation above said surface and at a sufficient distance above the latter to slice the back of a shrimp and expose the sand vein of the latter when the back of a shrimp is moved along a knife blade, means movably supporting said trough for movement in a direction which is transverse thereof, means connected to said trough for causing back and forth movement of said trough transversely of its length and of sufficient force to shift shrimp moving longitudinally of said trough transversely thereof and alternately against said opposed knife blades.

10. The combination of claim 9 wherein said knife blades are parallel to the longitudinal axis of said trough.

11. The combination of claim 9 wherein said knife blades extend substantially the length of said trough.

12. The combination of claim 9 including means operatively associated with said trough for delivering water to said bottom surface uniformly over the area of the latter.

13. The combination of claim 12 wherein said last means is mounted under the trough and has apertures through said bottom surface.

14. The combination of claim 9 wherein said supporting means comprises a pivot for said trough extending longitudinally and medially thereof.

15. The combination of claim 9 wherein said supporting means includes a pivotal mounting for said trough comprising for rocking movement about an axis extending longitudinally of said trough.

16. A shrimp de-veiner comprising a member providing an elongated supporting surface upon which shrimp are adapted to slide, a pair of knife blades disposed in opposed side by side relation, and with their cutting edges facing each other at opposite sides of said elongated surface, said knife blades extending longitudinally of said elongated surface, means for supporting said blades in fixed vertically spaced relation above said surface and at a sufficient distance from the latter to slice the back of a shrimp and expose the sand vein of the latter when the back of a shrimp is moved along a knife blade, means movably supporting said member for movement in a direction transverse to said elongated surface, means operatively associated with said member for causing a back and forth movement of said member transversely of said elongated surface and of sufficient force to shift shrimp moving longitudinally of said surface transversely thereof and alternately against said opposed knife blades.

17. The combination of claim 16 wherein said supporting means comprises means mounting said member for rocking movement about an axis extending longitudinally of said surface.

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3414934

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Whereas, THERE HAS BEEN PRESENTED TO THE

Commissioner of Patents

A PETITION PRAYING FOR THE GRANT OF LETTERS PATENT FOR AN ALLEGED NEW AND USEFUL INVENTION THE TITLE AND DESCRIPTION OF WHICH ARE CONTAINED IN THE SPECIFICATION OF WHICH A COPY IS HEREUNTO ANNEXED AND MADE A PART HEREOF, AND THE VARIOUS REQUIREMENTS OF LAW IN SUCH CASES MADE AND PROVIDED HAVE BEEN COMPLIED WITH, AND THE TITLE THERETO IS, FROM THE RECORDS OF THE PATENT OFFICE IN THE CLAIMANT (S) INDICATED IN THE SAID COPY. AND WHEREAS, UPON DUE EXAMINATION MADE, THE SAID CLAIMANT (S) IS (ARE) ADJUDGED TO BE ENTITLED TO A PATENT UNDER THE LAW.

NOW, THEREFORE, THESE Letters Patent ARE TO GRANT UNTO THE SAID CLAIMANT (S) AND THE SUCCESSORS, HEIRS OR ASSIGNS OF THE SAID CLAIMANT (S) FOR THE TERM OF SEVENTEEN YEARS FROM THE DATE OF THIS GRANT, SUBJECT TO THE PAYMENT OF ISSUE FEES AS PROVIDED BY LAW, THE RIGHT TO EXCLUDE OTHERS FROM MAKING, USING OR SELLING THE SAID INVENTION THROUGHOUT THE UNITED STATES.

In testimony whereof, I have hereunto set my hand and caused the Seal of the Patent Office to be affixed at the City of Washington this tenth day of December, in the year of our Lord, one thousand nine hundred and sixty-eight, and of the Independence of the United States of America the one hundred and ninety-third.

Attesting Officer

Commissioner of Patents

Dec. 10, 1968 R. G. SKRIMETTA ET AL 3,414,934

SHRIMP VEIN REMOVING APPARATUS

Filed June 29, 1966 3 Sheets-Sheet 1

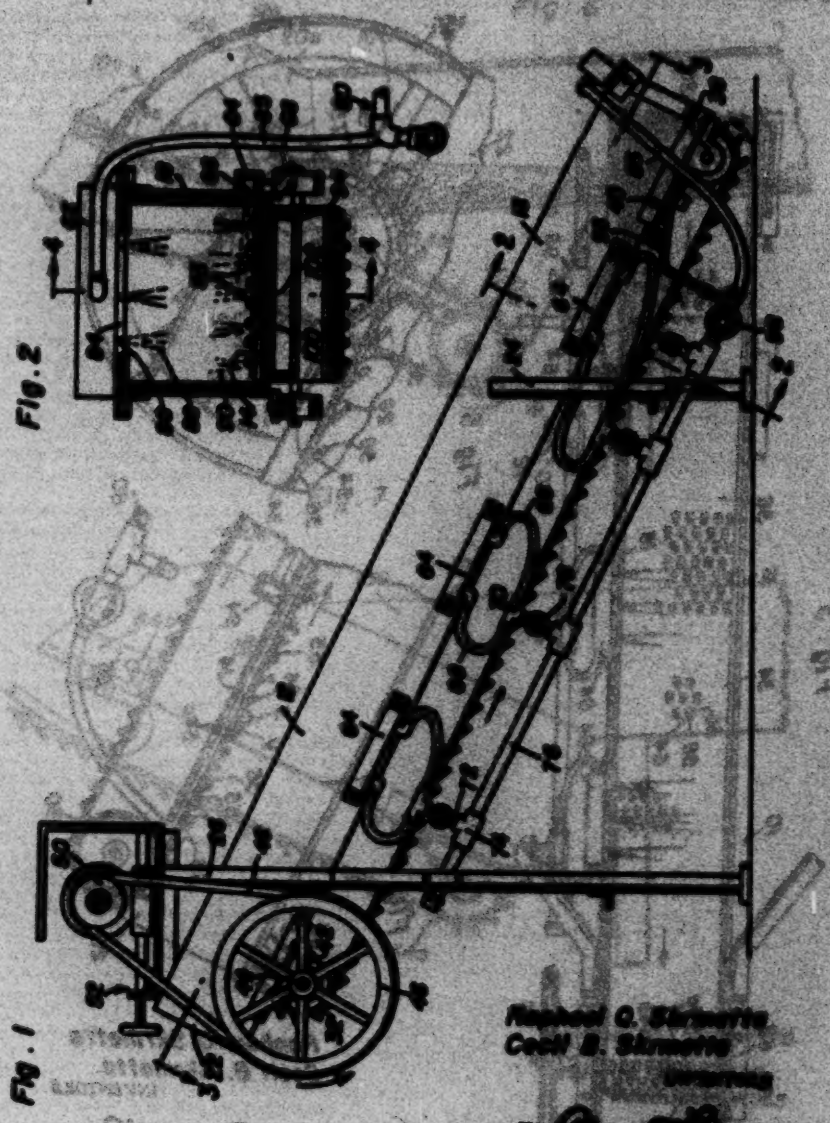


Fig. 2

Fig. 1

Raphael G. Skrimetta
Cecil R. Skrimetta
inventors

BY

Dec. 10, 1968 R. Q. SKRMETTA ETAL 3,414,934

SHRIMP VEIN REMOVING APPARATUS

Filed June 29, 1966 3 Sheets-Sheet 3

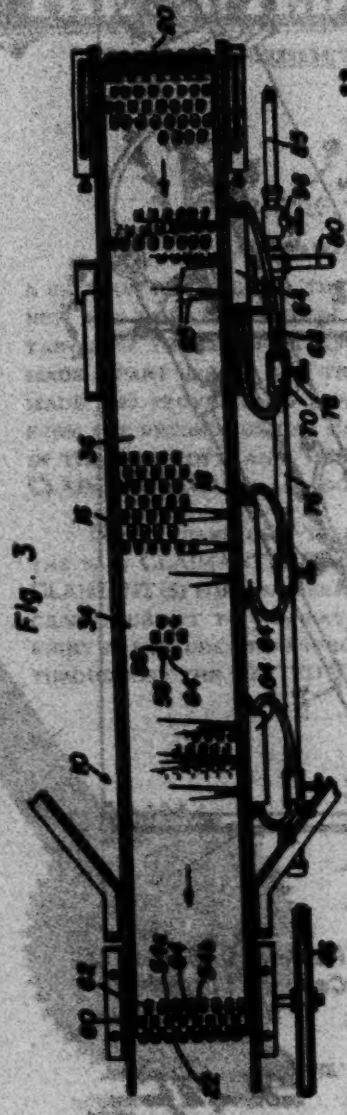


Fig. 3

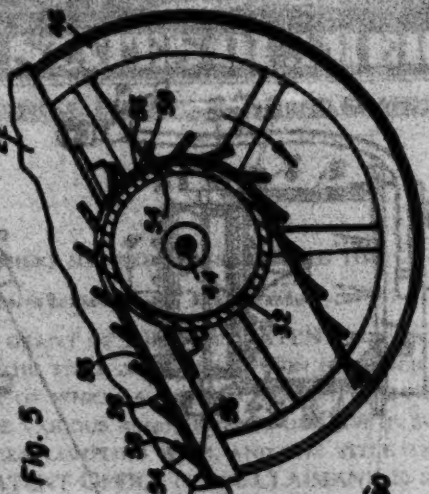


Fig. 5

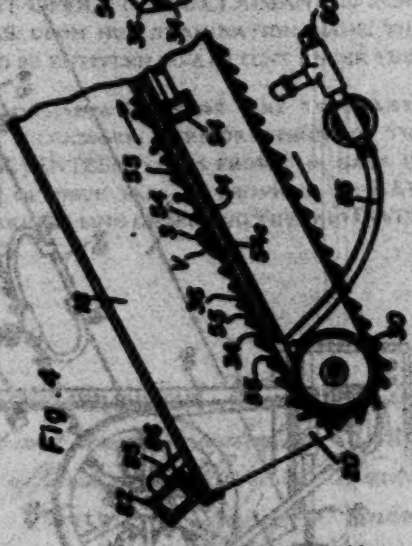


Fig. 4

Raphael Q. Skrmetta
Cecil B. Skrmetta
INVENTORS

BY

Dec. 10, 1968 R. G. DERMETTA, ET AL. 3,414,934

SEWING PILE REMOVING APPARATUS

Filed June 29, 1966 5 Sheets-Sheet 3

Fig. 6

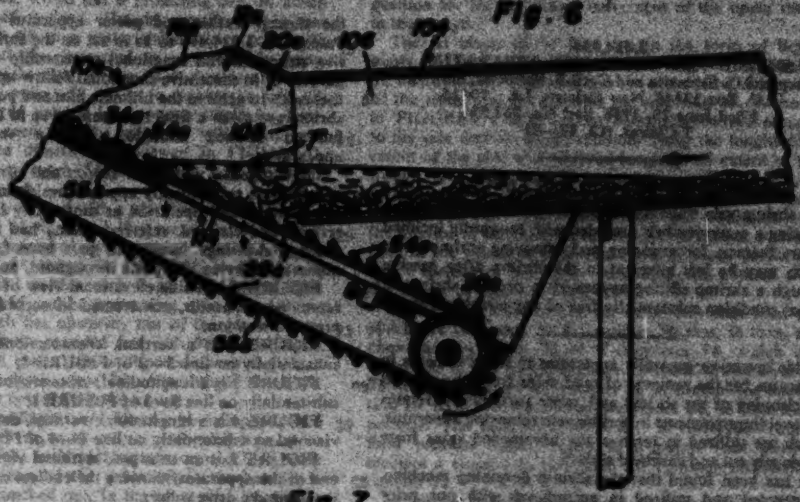
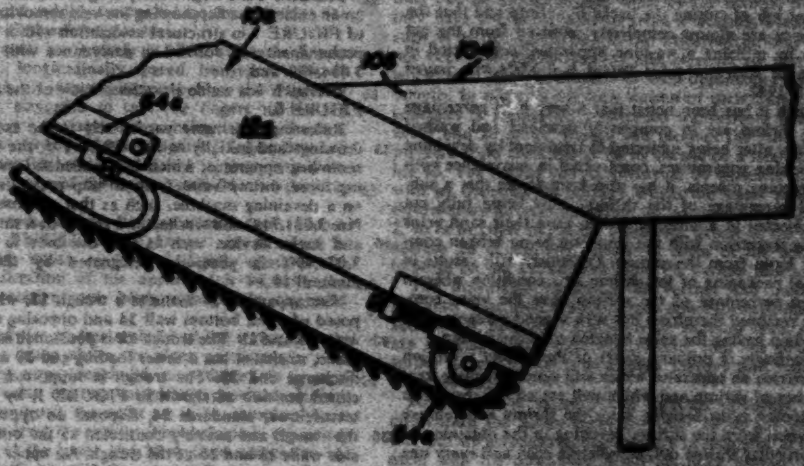


Fig. 7



Raymond G. Dermetta
Cecil G. Dermetta
INVENTORS

BY

United States Patent Office 3,414,934 Patented Dec. 10, 1968

3,414,934

SHRIMP VEIN REMOVING APPARATUS

Raphael G. Bienvenu and Cecil B. Bienvenu, both of P.O. Box 13145, New Orleans, La. 70125

Filed June 28, 1966, Ser. No. 561,534
7 Claims. (Cl. 17—5)

ABSTRACT OF THE DISCLOSURE

A shrimp vein removing apparatus and conveyor incorporating a conveyor belt provided with forwardly inclined fingers thereon for engaging and removing shrimp veins which may be left attached to the shrimp after passing through a shrimp deveining apparatus to provide shrimp in a final condition substantially free of any attached veins.

This invention generally appertains to improvements in apparatus for the removal of sand veins from shrimp and the cleaning of the shrimp and, more particularly, relates to novel improvements in shrimp vein removing apparatus, which are utilized to remove any unremoved veins from previously cut and deveined shrimp.

It has been found that the shrimp deveining machine, constructed and utilized in accordance with our prior Patent No. 3,031,714, issued May 1, 1962, performs an excellent job of cutting the backs of shrimp and that the sand veins are almost completely removed from the cut shrimp by utilizing a washing apparatus, constructed in accordance with our prior Patent No. 3,024,490, issued Mar. 13, 1962.

Though it has been noted that a very high percentage of the shrimp are in completely deveined and washed condition, after being subjected to treatment by deveining and cleaning apparatuses, constructed in accordance with the foregoing patents, it has also been found that a substantial percentage of the shrimp, after being fully cut and subjected to a washing action, have their sand veins hanging therefrom with the veins not being broken completely loose from the shrimp. Obviously, this results in the final packaging of the shrimp in a condition wherein the vast percentage of the shrimp have the veins completely removed therefrom but with a good percentage of the shrimp having the veins hanging onto the shrimp.

Accordingly, a primary object of the present invention is to provide an apparatus which will simultaneously treat a number of shrimp and which will act on the shrimp so as to loosen veins hanging from the shrimp and remove loose veins from the shrimp, resulting in the obtaining of any particular shrimp output, wherein each and every one of the shrimp is completely cleaned.

Another object of the present invention is to provide a shrimp vein removing apparatus which will not damage the shrimp, particularly in that there will be less damage to the color pigments of deveined shrimp, resulting in greater commercial yields.

Another important object of the present invention is to provide a shrimp vein removing apparatus, which is more economical to run and upon considerably less to manufacture and maintain in operation, when considered on a per pound basis that the customer has to pay for the product, and which will be used, in conjunction with the shrimp deveining machine and washing apparatus of our foregoing patents to carry out a final step in the complete and fully cleaning of the shrimp, with each shrimp of the total number treated being in a clean final condition and having an undamaged and very attractive and appetizing appearance.

Another object of the present invention is to provide a shrimp vein removing device which is constructed and adapted for use as a functional and structural adjunct to the shrimp washer and peeler apparatus of our prior Patent No. 3,024,490 so as to act on the shrimp in successive structural and functional relationship with such apparatus or in successive functional follow-up relation only therewith to achieve the ultimate aim and purpose that the shrimp are given a final treatment so as to be in perfectly finished cleaned condition with a very attractive appearance.

These together with other objects and advantages which will become subsequently apparent reside in the details of construction and operation as more fully hereinafter described and claimed, reference being had to the accompanying drawings forming a part hereof, wherein like numerals refer to like parts throughout, and in which:

FIGURE 1 is a side elevational view of a shrimp vein removing apparatus, constructed in accordance with the present invention;

FIGURE 2 is a vertical, cross-sectional view, taken substantially on line 2—2 of FIGURE 1;

FIGURE 3 is a longitudinal, cross-sectional view, taken substantially on line 3—3 of FIGURE 1;

FIGURE 4 is a longitudinal, vertical, detailed sectional view taken substantially on line 4—4 of FIGURE 2;

FIGURE 5 is an enlarged, sectional view of the upper end of the apparatus, showing the endless conveyor traveling around a drive roller;

FIGURE 6 is a fragmentary longitudinal sectional view, on an enlarged scale, showing the vein removing apparatus of FIGURE 1 in structural association with a washer and peeler apparatus, formed in accordance with Patent No. 3,024,490, and,

FIGURE 7 is a side elevational view of the assembly of FIGURE 6.

Referring now more particularly to the accompanying drawings and initially to FIGURES 1–5, the shrimp vein removing apparatus, which is intended for use in removing loose shrimp veins from shrimp previously deveined on a deveining machine, such as that disclosed in Patent No. 3,031,714, and washed and peeled in a shrimp washer and peeler device, such as that disclosed in Patent No. 3,024,490, is generally designated by the reference numeral 10.

The apparatus 10 includes a trough 12, which is composed of a flat bottom wall 14 and opposing straight side walls 16 and 18. The trough 12 is positioned in an inclined plane, so that it has a lower loading end 20 and an upper discharge end 22. The trough is supported, in such inclined position as shown in FIGURE 1, by means of a set of lower standards 24, disposed on opposite sides of the trough and suitably connected to the outsides of the side walls 16 and 18 of the trough. An upper set of standards 26 is provided, with the standards 26 of greater height than the lower standards 24 and being disposed on and attached to the opposite sides of the trough. The standards 26 may be formed in sections so that they can be adjusted, whereby the angle of inclination of the trough 12, relative to the floor surface, may be adjusted, if desired.

An endless belt 28 is provided and is supported, at its lower end, by an idler roller 30 and supported, at its upper end, by a drive roller 32, in a manner so that the belt has an upper flight or reach 34 which passes over the bottom 14 of the trough 12. The upper flight or reach 34 has a flat upper face 36.

The endless belt 28, which is preferably formed from thin stainless steel, travels around the rollers 30 and 32 and is driven by the drive roller 32 in such a manner so that the upper flight or reach 34 moves upwardly in the trough, in the direction of the arrows, as shown in FIGURES 3 and 4.

The idler roller 30 is mounted in suitable bearing bracket supports 38 that are attached to the opposite sides 16 and 18 of the trough, at the lower end 20

thereof. The roller is provided with a belt adjustment or tightening means 40.

The drive roller 36, which rotates in a counter-clockwise direction, as viewed in FIGURE 1, is supported by bracket bearing supports 42, that are attached to the sides 16 and 18 of the trough, adjacent the upper discharge or outlet end 22 of the trough. The roller 22 includes a shaft 44, which has a projecting end on which a drive pulley 46 is fixed. The drive pulley 46 is connected by a belt 47 to a motor driven drive pulley 48, which is operatively connected to any suitable prime mover. A belt tightening means 52 is structurally associated with the pulley 50 so as to adjust the belt 47. With the pulley 46 rotated in a counter-clockwise direction, it can be seen that the roller 22 will rotate in a counter-clockwise direction, as viewed in FIGURE 1, so that the upper reach 24 of the belt will move upwardly therearound.

The belt 25 is provided with a plurality of spring fingers 54 in the form of fingerwall like members, the fingers being preferably formed by punching portions of the belt outwardly. As shown in FIGURES 4 and 5, the fingers are formed so that each finger includes an inner attached portion 56 and an upstanding, free rounded end portion 58, which lies upwardly out of the plane of the reach 24, so that the rounded free ends 58 of the fingers lie in a common plane that is disposed above the plane of the upper or top surface 26 of the upper reach 24, as the belt moves upwardly in the trough.

Preferably, the fingers are formed by being punched out from the belt so as to create perforations or openings 55 in the belt, such perforations or openings being established by virtue of the voids left in the belt when the fingers are punched out. In the event that the fingers are formed as separate entities so that they would be fixed, as by spot welding or the like on the belt, then the belt would be of a perforated nature.

As shown more particularly in FIGURE 3, the fingers are formed in longitudinally spaced, transverse rows 60 and 62, which are representative, in that the fingers of the rows are staggered so that the fingers of row 60 have their free outer ends 58 pointing toward the belt portions 64 interposed between adjoining fingers 54a and 54b of a preceding row, considered in the upward directional movement of the upper reach 24 over the bottom 14 of the trough.

In other words, as can be appreciated from a consideration of FIGURE 3, the fingers are arranged in transverse rows which are spaced slightly apart in the longitudinal direction of the upper reach 24, with the fingers of successive rows being arranged in staggered relationship.

The rounded tips or free ends 58 of the spring fingers, which lie in a plane above the plane of the upper surface 26 of the upper reach 24, are adapted to engage the hanging veins on non-completely deveined shrimp and capture or hook the veins so as to completely remove the veins from the shrimp. The shrimp are deposited in the trough at the lower end 20 and are adapted to be carried upwardly toward the upper discharge end 22, while being acted upon by the fingers, with the tips 58 capturing the hanging veins and separating the hanging veins from the shrimp.

It is to be noted that the fingers extend or point in the direction of upward travel of the upper flight or reach 24 and that the shrimp are deposited in the trough and caught by the tips of the fingers so that a complete clawing action results.

Means is provided for causing the shrimp to be lifted from the upper surface 26 of the upper flight or reach 24 of the belt and to cause the shrimp to tumble over the fingers, for more severe action when required in the event that some of the shrimp have veins so attached thereto that it is very difficult for the fingers to remove the hanging veins from the shrimp. The means for causing a tumbling and rolling action of the shrimp preferably comprises jet blasts 66 of fluid directed across the upper reach 24, transversely of the path of movement of the upper reach, and in a manner to impinge, obliquely or laterally, upon the upstanding fingers. Such jet blasts will not only produce a turbulent, rolling action of the shrimp but will prevent the veins already freed from being captured by any one of the fingers and held in such position for the full travel movement of the upper reach in the trough.

The jet blasts 66 of fluid are in the form of liquid blasts, preferably water jets. In this regard, a plurality of manifolds 68 are attached to one of the side walls of the trough, as for example the side wall 18, as shown in FIGURES 1 and 3. The manifolds 68 are mounted to the side wall in spaced relation, along the longitudinal extent of the side wall and the transversal extent of the trough. The side wall 18, as shown in FIGURE 3, is formed with a plurality of longitudinally spaced, small jet openings 66, which communicate the manifolds with the interior of the trough and provide the means whereby fluid in the manifold is forced under pressure across the upper surface of the upper reach and into contact with the fingers, as shown in FIGURE 2.

Each of the manifolds is provided with inlet lines 69, which are connected to T-couplings 70 that, in turn, are connected by pipes 72 to T-couplings 74, which are connected in line with a common conduit 76. Shut-off valves 78 are provided in the conduits 72 to control the admission of fluid to each of the manifolds 68, in individual manner. The fluid, such as water, is conveyed from a fluid pressure source, such as a pump (not shown) through a conduit means 80 to the common distributing conduit 76.

When the shrimp are supplied by fingers at the lower inlet end 20 of the trough, some of the shrimp, though they have just been removed from a washing apparatus, such as of the type shown in our prior patent, may have not been thoroughly washed and cleaned, so that they would have unwanted debris or shell appendages clinging thereto. In order to rid such shrimp of such clinging appendages, a header 82 is disposed transversely over the lower end 20 of the trough and receives the fluid under pressure from the conduit 76 by means of a flexible tubing 84. The header has its underside 84 which is formed with jet openings 86 through which the water passes in downwardly directed jet sprays 88, as shown in FIGURE 2, so as to cover the entire transverse extent of the upper surface 26 of the upper reach or flight of the belt that leaves on the shrimp and clean the shrimp thoroughly.

The downward jet sprays 88 further aid and supplement the gravity function to forcibly pass down through the perforations or openings 55 in the upper reach, which are hanging freely from the shrimp, into the trailing spring fingers so as to be caught thereby and removed from the shrimp.

Jet streams or blasts 90 are directed upwardly, from underneath the upper flight or reach 24 of the endless belt and are arranged so that they are in staggered arrangement with the downward blasts 88. Such upward blasts pass through the perforations 55 to act in concert with the downward jet sprays 88 in drawing the hanging unpeeled veins into position for seizing or grabbing by the resilient gripping action of the fingers 54.

In addition, the upward jet blasts 90 serve to clean the fingers, as they come around the roller 30 and start on their upward movement and receive the shrimp deposited at the inlet end of the trough. The fingers may possibly have veins adhering thereto and the upward blasts 90, which pass through the openings 55 formed in the belt by virtue of the punched out fingers 54 (or formed deliberately in the belt in the instance where the fingers are separate components affixed on the belt), impinge upon the underside of the fingers and the other tips 58 thereof.

The jet blasts 90 are obtained by means of a lower manifold 94, which is transversely disposed below the

between 14 of the trough and which receives the water pressure by means of a flexible conduit 94. The flow of fluid in the conduits 92 and 94 is controlled by a manual valve 96. The bottom of the trough is formed with jet openings 100, which communicate with jet openings 102 in the attached wall of the transversely extending manifold 94.

In use, the shrimp, after being treated by a shrimping or shrimp washing apparatus of the type disclosed in our prior patents, are deposited in bulk on the lower end 20 of the trough and the endless belt is driven by the drive roller 22 through the drive belt means, as shown in FIGURE 1, or by any other suitable drive means. The shrimp are initially contacted by the downwardly directed jet blasts 98 and the upward fluid jet blasts 99 which serve to clean the shrimp and to dump the exposed veins into the shrimping washing fingers and also function to clean the fingers. The fingers, in view of their staggered rear arrangement, as shown in FIGURE 1, carry the shrimp upwardly on the upper reach 24 of the belt and the hanging veins of the shrimp are contacted by the tips 26 of the spring fingers. Thus, as shown in FIGURE 4, a shrimp 3 has its hanging vein V engaged by the tip of the finger 24c and the finger moves to engage the hanging vein and remove the vein from the shrimp.

The shrimp are prevented from being engrossed by the fingers and are advanced to a vertical, rotating action by the transverse jet blasts from the manifolds 94, as shown in FIGURES 1 and 3. Thus, the shrimp are kept in a constant state of tumbling agitation and are lifted from and lowered on the upper surface 26 of the upper reach or flight 24 of the endless belt.

The shrimp, after being vigorously and repeatedly subjected to the action of the spring fingers are carried sidewardly by the spring fingers to the upper discharge end 22 of the trough, and are deposited into any suitable receptacle or conveying means for ultimate packaging, in any manner, to be delivered to the consumers.

As the fingers pass around the top roller 22, which is shown in FIGURE 3, the fingers tend to flex outwardly slightly, away from the outer surface of the belt, due to the curvature of the end of the belt in its entrainment over the drive roller 22. Such slight outward flexing of the fingers assures that any caught veins will be released by the fingers and thus any loss therefrom. In the event that some of the fingers still have veins clinging thereon, when they enter the lower end of the trough, the jet blasts 99 will ensure that the veins are removed and that all of the fingers are in a clean condition to receive subsequent bulk loads of shrimp deposited on the upper flight or reach of the belt, at the lower end of the trough.

As shown in FIGURES 6 and 7, the shrimp vein removing apparatus 10a, which is the structural and functional equivalent of the apparatus 10, shown in FIGURES 1 through 5, is illustrated in structural association with a shrimp washer and peeler, which is constructed in accordance with Patent No. 3,024,492.

The shrimp washer and peeler 104 is constructed substantially in accordance with FIGURE 2 of such patent and, generally stated, comprises a trough or flume in the form of channel-like structure 106, which is inclined and has a discharge lower end 108 from which water, as indicated by the arrows in FIGURE 6, and shrimp, as illustrated in FIGURE 6, emerge. The water flushes downwardly over the discharge end 108 and the shrimp exit from the discharge end with the water. The primary function of trough 106 is to take fully peeled shrimp that have been previously cut and by water jets open up the shrimp at the tail and wash the veins out of the shrimp for the apparatus 10a to remove the long-on veins.

With respect to the use of the apparatus 10 of FIGURES 1-5, shrimp, as they emerge from the outlet 108, are collected and then are deposited on the upper elevating flight of the endless belt at the lower loading end 20. However, in the form of FIGURES 6 and 7, the shrimp

vein removing device 10a is not only a functional adjunct to the washer and peeler apparatus 104 but is also a structural adjunct in that it is directionally correlated with the outlet or discharge end 108.

Thus, the discharge end 108 of the trough 106 overlies the lower loading end 20a and is positioned within the lower trough above the lower end portion of the upper flight 24a so that the rushing water, indicated by the arrows in FIGURE 6 and the shrimp (designated 3A FIGURE 6) fall onto the lower end portion of the upper flight 24a.

The lower loading end 20a of the trough 12a and the lower end portion 114 of the upper flight or reach 24a underlie the discharge or outlet end 108 of the washing trough 106, as shown in FIGURE 6, so that the washing water, cascading or exiting from the discharge end or outlet 108, passes down through the perforations or openings 26a in the belt. The water, as indicated by the arrows, is discharged in the nature of waterfall sprays and the water rushes downwardly through the perforations 26a of the belt so as to serve the same purpose as the downwardly directed jet sprays 98, shown in FIGURE 2.

The discharge end 108 of the trough 106 is positioned within the lower loading end 20a of the trough 12a and disposed between the side walls 16a and 18a, with the discharge end 108 positioned approximately six inches, for example, ahead of the center of the shaft for the lower idler roller 30a.

The shrimp and washing water will fall onto the lower end portion 114 of the upper flight or reach 24a and there is an abundance of water, simulating a tank within the lower loading end 20a of the trough 12a, as generally identified by the reference character T in FIGURE 6, with the water rushing down through the perforations 26a in the belt 24a. The water builds up somewhat to define a simulated water-filled tank T and functions to dump the exposed veins from the shrimp deposited from the discharge end 108 of the washing trough 106 and cascaded on the lower end portion 114 of the upper flight 24a into the fingers 24c.

The shrimp are in a simulated orbit until they gain traction with the upper flight 24a of the belt 24a, preserving the exposed veins for picking by the fingers 24c.

After the shrimp gain traction with the upper flight 24a, they are carried by the upper flight and the fingers 24c up to the outlet end (not shown but the same as the outlet end 22 of the apparatus 10).

Above the point where the ends 108 of the washing trough 114 is in meeting discharge relationship with the upper flight 24a, the side wall 18a of the device 10a is provided with a manifold 64a, which is supplied with liquid under pressure in the same manner as the manifolds 64 of FIGURES 1 through 3. The manifold 64a is provided so that the shrimp on the upper surface of the shrimping or upper flight, after they have been deposited onto the lower end portion 114 of the upper washing flight 24a, are subjected to jet blasts of fluid passing transversely over the upper surface of the flight and impinging on the fingers 24c and cascading the shrimp lying on the upper surface of the upwardly moving washing flight of the endless belt so that the shrimp are given a tumbling action and are intermittently lifted bodily from the surface and are tumbled over and over into contact with the ends of the fingers to ensure that all of the hanging veins of the shrimp are plucked and removed from all of the shrimp by the plucking or plucking action of the fingers 24c.

The foregoing is considered as illustrative only of the principles of the invention. Further, since numerous modifications and changes will readily occur to those skilled in the art, it is not desired to limit the invention to the exact constructions and operations shown and described, and

accordingly all suitable modifications and equivalents may be resorted to, falling within the scope of the invention as claimed.

What is claimed as new is as follows:

1. Shelling nuts comprising opposite diagonally on an inclined trough having a lower loading end and an upper discharge end, an endless driven belt having a flight projecting upwardly in the trough from the lower loading end to the upper discharge end, said flight having an upper surface, a plurality of fingers pivoted for movement transversely thereof with the fingers having free ends disposed above the upper surface of said belt flight and being in the direction of movement of the flight for picking and removing nuts singly engaged by the flight at the lower loading end with the fingers moving over the upper surface and to move the shelling in the trough to the discharge end, said belt being formed with perforations constructed and arranged to permit gravity flow adjacent the lower loading end for separating the hanging nuts and permitting the nuts to move while gripping by the fingers, said belt having shelling means overlying the upper surface of the belt flight adjacent the lower loading end for shelling nuts in successively formed jet blasts nuts shelling elements on the belt flight adjacent the lower loading end with the blasts passing at least through the perforations in the belt.

2. The invention of claim 1 and including means for providing a shielding action of the shelling jets on the upper surface of the belt flight whereby the shelling jets moved into and out of contact with the fingers as they are moved by the fingers to the discharge end of the trough to insure that all of the hanging nuts of all of the shells are removed.

3. The invention of claim 2, wherein said last mentioned means for shielding comprises jet blasts of fluid passing successively over the upper surface of the flight and impinging on the fingers and surrounding the shelling lying on the upper surface and engaged by the ends of the fingers so that the shelling are substantially lifted bodily from the surface and the nutmeat over and over into contact with the ends of the fingers so that all of the hanging nuts of the shelling are shelled and removed from all of the shelling.

4. The invention of claim 1, wherein said belt is an endless stainless steel band with the flights provided with the shelling jets, said fingers being arranged in staggered rows across the band and constituting an extended bar with a common plane connecting the ends of the fingers.

5. The invention of claim 1, wherein said last mentioned means for shielding jets under pressure in jet blasts upwardly through the perforations and impinging against the fingers and surrounding to shield the fingers.

6. The invention of claim 5, wherein the successively formed jet blasts of fluid and upwardly directed jet blasts of fluid are in staggered arrangement positioned across opposite sides of the trough.

7. Apparatus for separating and shelling shelling nuts in combination comprising an endless flexible stainless steel belt having diagonal flat upper surfaces disposed at an acute angle from the upper surface of the belt, and a flexible finger for shelling nuts and substantially rigid with their free ends extended out of the belt at a position substantially less than that of the belt, said shelling nuts being successively fed into engagement with the belt and the nuts being engaged by the fingers and moved, said shelling jets shielding and the fingers from passing shelling nuts with the belt and removing the shelled nuts from the belt to discharge positions.

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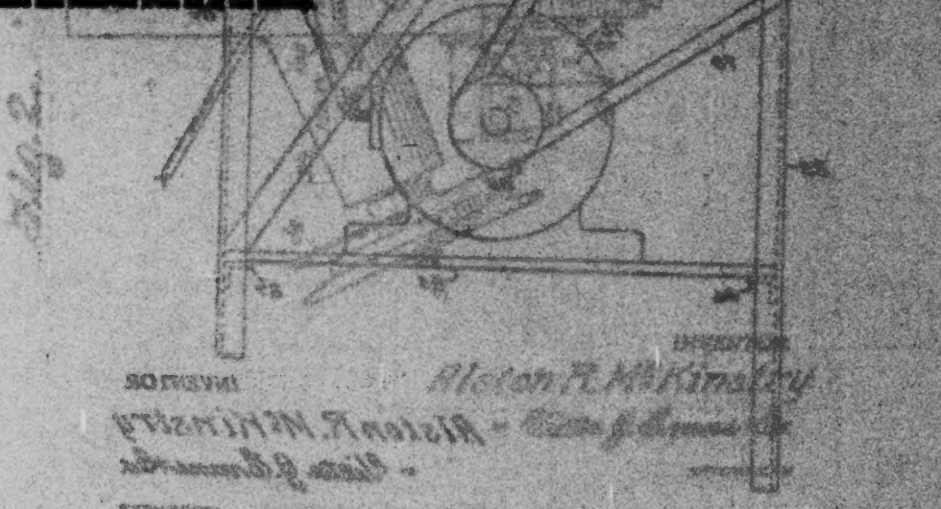
LUCIE H. LAUDENSLAGER, Primary Examiner.
U.S. Cl. X.R.
17—45



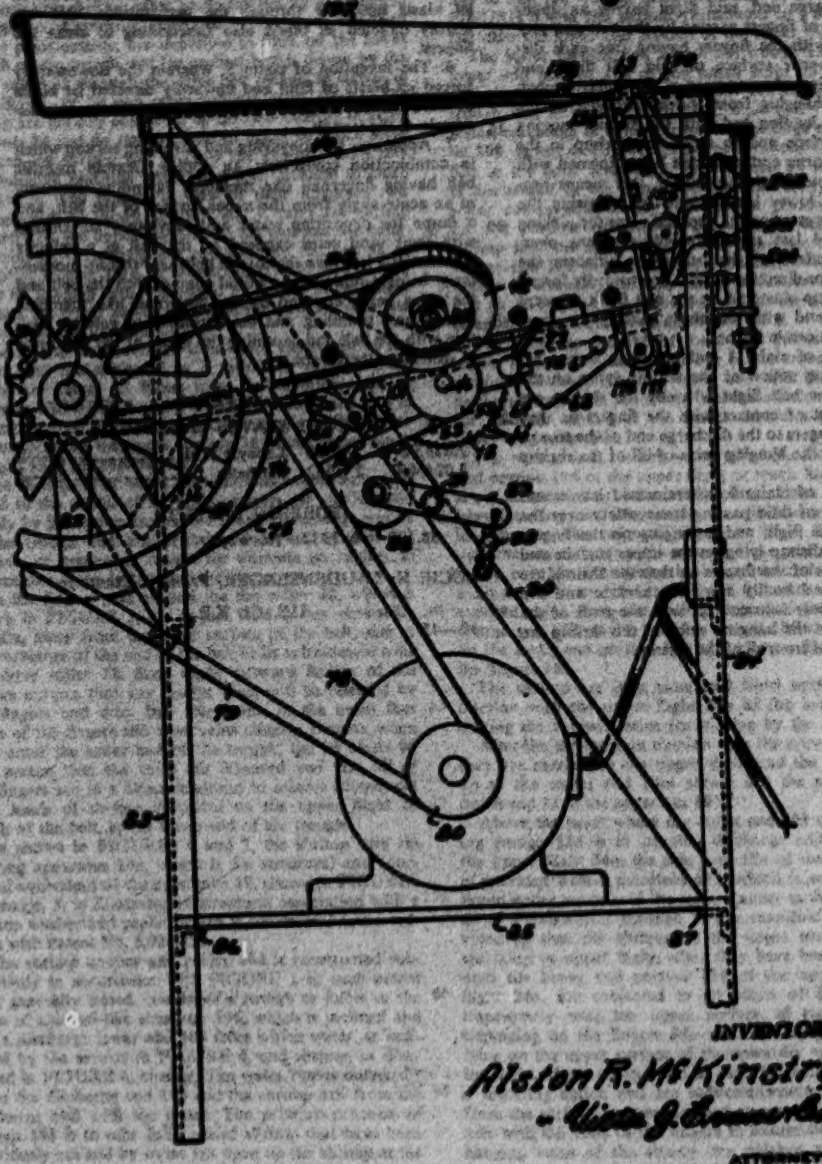
INVENTOR
Alston R. McKinstry

July 14, 1953 A. R. McKINSTRY 2,644,980

[illegible] AND SPLITTER

Filed June 25, 1949 7 Sheets-Sheet 1

Fig. 1.



INVENTOR.
Alston R. McKinstry
Victor J. Emmerth
ATTORNEYS

July 14, 1953 A. R. MCKINSTRY 2,644,980

SHEEP SHEARING AND SPLITTER

Filed June 30, 1950 7 Sheets-Sheet 2

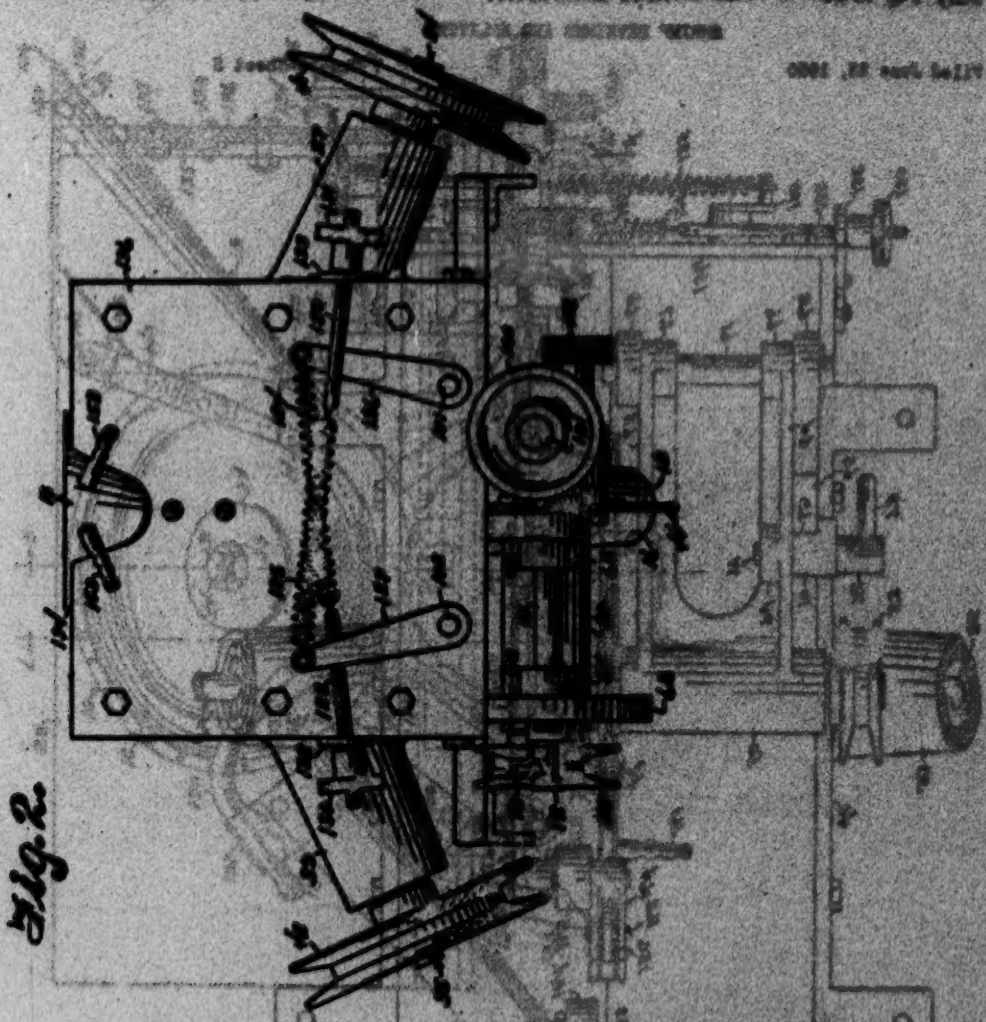


Fig. 2.

INVENTOR.
Alston R. McKinstry
By Clarence J. Hammond
ATTORNEY

July 14, 1953 A. R. McKINSTRY 2,644,980

SHRIMP DEVEINER AND SPLITTER

Filed June 25, 1949 7 Sheets-Sheet 3

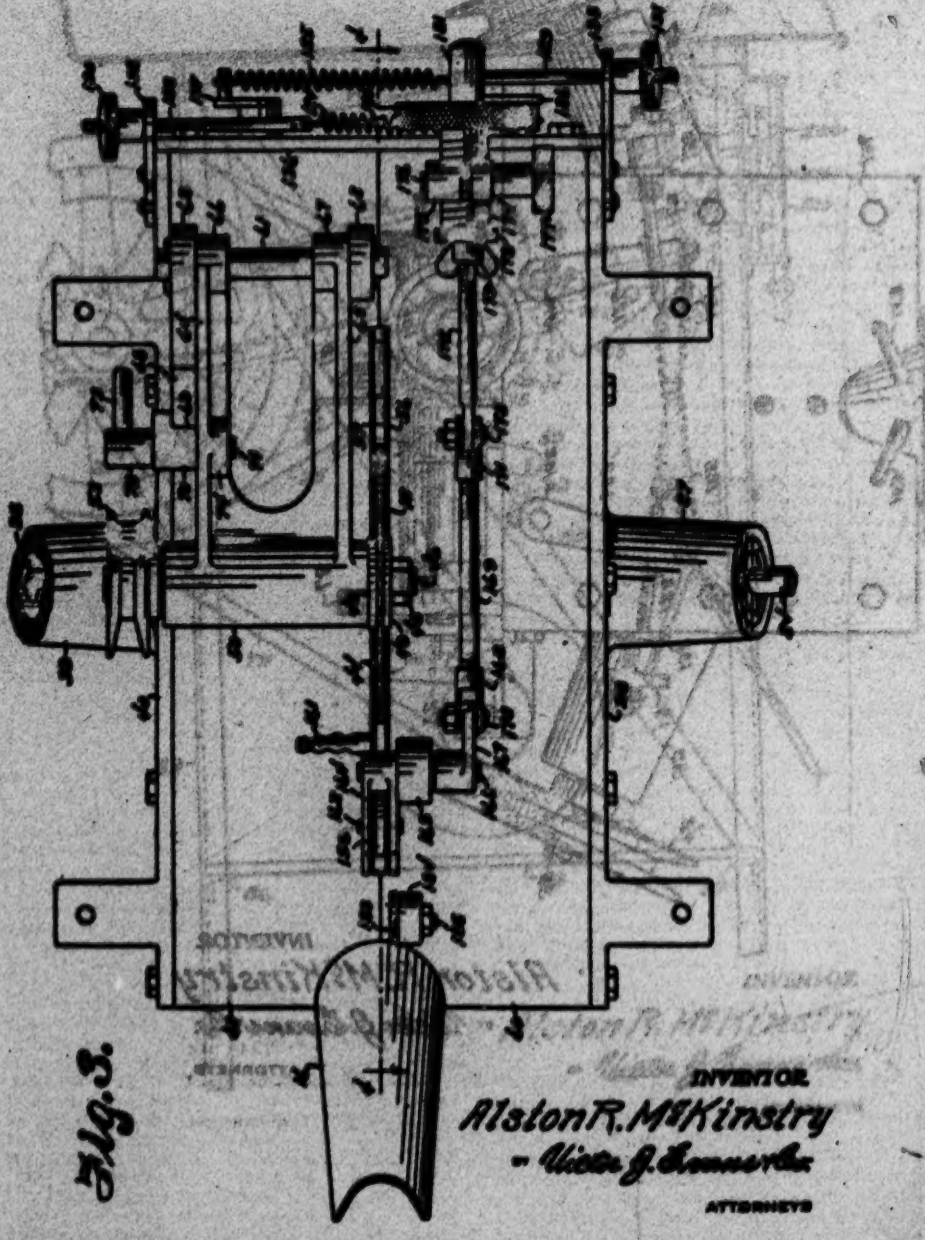


Fig. 3.

INVENTOR.
Alston R. McKinstry
By Victor J. Evans
ATTORNEYS

July 14, 1953 A. R. McKINSTRY 2,644,380

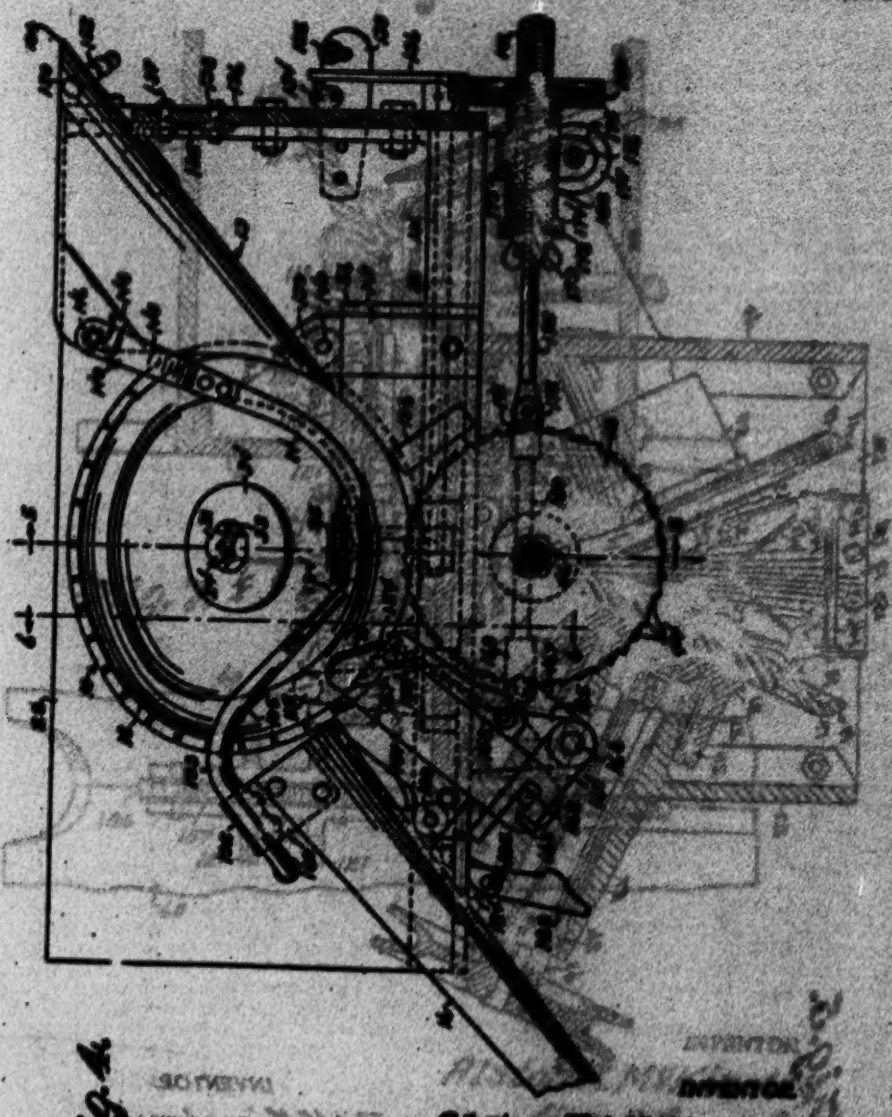


Fig. 4.

INVENTOR.
Alston R. McKinstry
Wm. J. Dunnell

ATTORNEYS

July 14, 1953 A. R. MCKINSTRY 2,644,960

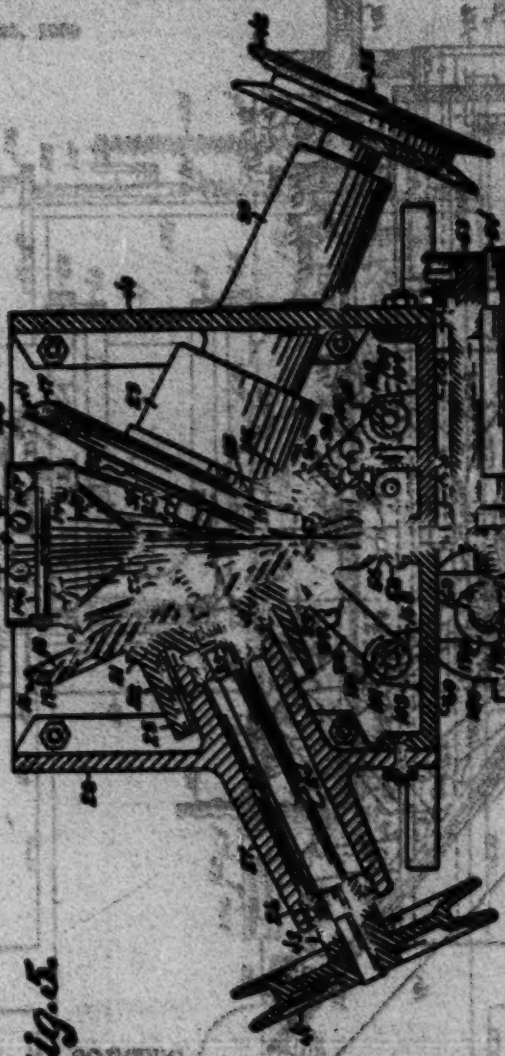


Fig. 5.

INVENTOR.
Alston R. McKinstry
by Victor J. Emmerth
ATTORNEYS

UNITED STATES PATENT OFFICE

July 14, 1953 A. R. McKinstry 2,644,900

Filed June 28, 1949

Fig. 6.

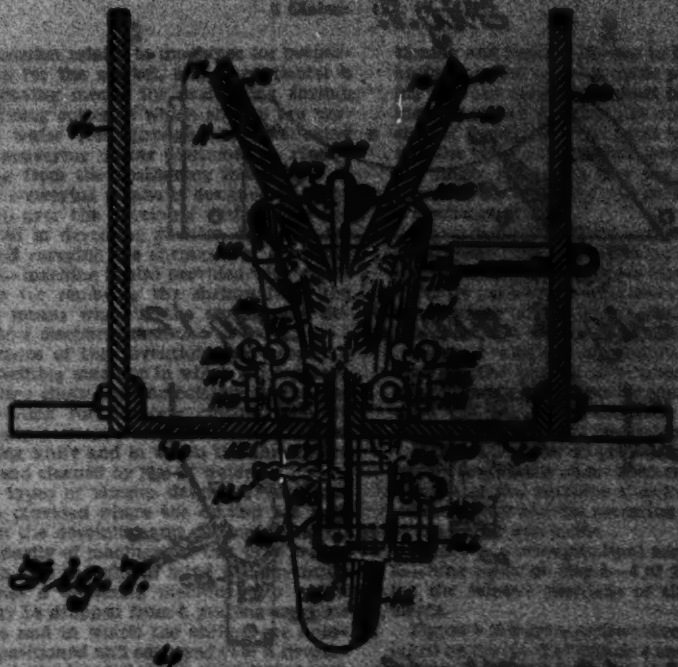


Fig. 7.

Alston R. McKinstry

Wm. J. Kenneth

July 14, 1953 A. R. McKINSTRY 2,644,980

[illegible] SPLITTER

Filed June 25, 1949 7 Sheets-Sheet 7

Fig. 1.

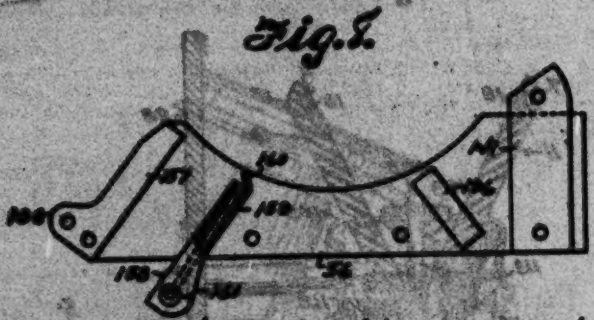
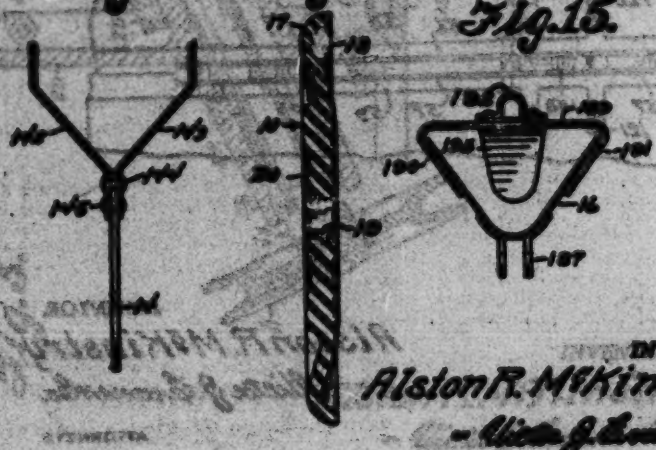


Fig. 3. Fig. 10. Fig. 11. Fig. 12.

Fig. 13. Fig. 14. Fig. 15.



INVENTOR.
Alston R. McKinstry
by Victor J. Evans & Co.
ATTORNEYS

UNITED STATES PATENT OFFICE

3

Figure 12 is an end elevational view of the discharge chute.

Referring now to the drawings wherein like reference characters denote corresponding parts the improved shrimp deveining machine of this invention includes a pair of flexible discs 10 and 11, a deveining cutter 12 positioned with the upper edge extended between the discs, a positioning chute 13, a shrimp centering rod 14, a knife-like finger 15, and a discharge chute 16.

The flexible deveining discs 10 and 11 are formed of rubber or other suitable resilient material and, as illustrated in Figure 14 these discs are formed with arcuate peripheral edges 17 forming a concave annular recess 18 in the inner surface and, as illustrated in Figures 5 and 6 the recess 18 is positioned to receive, hold, and convey shrimp over the cutter 12. The discs are provided with mounting bushings 19 and the intermediate areas of the outer surfaces are provided with corrugations 20 that receive corresponding corrugations 21 on the ends of hubs 22 and 23 against which the discs are mounted.

The disc 10 is mounted on a shaft 24 that is journaled by bearings 25 and 26 in a hub 27 and the hub is mounted in a side wall 28 of the knife housing by which the deveining elements are positioned. The hub 22 is keyed to the end of the shaft 24 by a key 29 with the hub positioned against a collar 30 and the disc 10 is mounted through the bushing 19 on a threaded stud 31 at the end of the shaft 24 with the disc clamped against a shoulder 32 by a nut 33 and with a washer 34 under the nut.

The disc 11 is mounted on a similar shaft 35 with the disc positioned on a stud 36 and held by a nut 37 with a washer 38. The shaft 35 is mounted in a hub 39 similar to the hub 27 and the hub is positioned in a side wall 40 of the housing. Pulleys 41 and 42 are mounted on the outer ends of the shafts 24 and 35, respectively, and the pulleys are secured in position by set screws 43.

The deveining cutter 12, which may be in the form of a circular saw and is here shown as having teeth 44 in the peripheral edge is mounted on a hub 45 on a shaft 46 with the cutter clamped in a recess 47 by a nut 48 with a washer 49 and the shaft is journaled in a hub 50 with bearings 51 and 52. The outer end of the shaft is provided with a pulley 53 that is secured on a stud 54 at the end thereof by a set screw 55.

The cutter 12 extends upwardly through guide plates 56 and 57, as shown in detail in Figure 6 and the guide plates are mounted between flanges 58 and 59 of a base plate 60 forming the bottom of the housing. With the parts formed in this manner the guide plates 56 and 57 hold the lower edges of the discs 10 and 11 separated, as illustrated in Figure 6 and the cutter 12 extends upwardly through the plate where it is positioned to engage shrimp held between the discs.

The hub 45 in which the shaft 46 upon which the rotary cutter 12 is journaled is pivotally mounted by shafts 61 in bearings 62 and 63 on the under surface of the base plate 60 through arms 64 and 65 with nuts 66 and 67, respectively positioned on the shaft 61. The bearing 62 is provided with an arcuate cam surface 68 that extends through a slot 69 in the hub 70 and the hub 70 clamps the arms 64 and 65, which supports the cutter 12, in selected adjusted positions by means of the clamp screw 71 having a head 72 with a handle 73 extended therefrom. The clamp screw extends through the hub 70 and is threaded into a boss 74 on the arm 64.

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The shaft 46 of the deveining cutter 12 is driven by a belt 75 which is trained over the pulley 53 and also over a pulley 76 on a shaft 77 which is driven from a motor 78 by a belt 79 that is trained over pulleys 80 and 81, as shown in Figure 1. The shaft 77 is journaled in brackets 82 mounted on the end members 83 of a supporting frame having corresponding end members 84 at the opposite side and the motor is positioned on a platform 85 supported between the end members by angles 86 and 87.

The belt 75 is held in tension by an idler 88 carried in the end of an arm 89, the arm being pivotally mounted on a diagonal strut 90 of the frame by a pin 91 and resiliently held by a spring 92.

The flexible discs 10 and 11 are also rotated from the shaft 77 with belts 93 trained over pulleys 94 on the shaft 77 and also over the pulleys 41 and 42 on the shafts 24 and 35, respectively.

The flexible discs 10 and 11 are retained in the deformed position, as illustrated in Figure 5 by rollers 95 and 96, of resilient material, the rollers being journaled on stub shafts 97 and 98 in the outer ends of arms 99 and 100 and the arms being journaled on shafts 101, and 102, respectively which are held in ears 103 and 104. The arms 99 and 100 are shown in detail in Figure 11 wherein the arm 100 is illustrated and each arm is provided with a hub 105 at one end and a flange 106 at the other with the stub shafts 97 and 98 mounted in the flanges 106 by threaded studs 107 and nuts 108. The outer ends of the stub shafts are provided with heads 109. These rollers 95 and 96 bear against the outer surfaces of the concave areas of the flexible discs, as illustrated in Figure 6 whereby the discs are urged inwardly at points spaced from the peripheries so that shrimp may be positively secured therebetween. The arm 99 is retained in position on the shaft 101 by a pin 110 and the arm 100 is secured in position on the shaft 102 by a pin 111.

The flexible discs may also be urged inwardly by resilient knobs 112 and 113 which are carried by the upper ends of springs 114 and 115, respectively and the springs are carried by blocks 116 and 117 and are pivotally mounted on pins 118 and 119 between ears 120 and 121, respectively and the blocks are held in adjusted positions by thumb screws 122 and 123, as shown in Figure 6. By these elements the walls of the discs are urged inwardly to firmly grip the shrimp as the shrimp pass over the rotary cutter 12.

The rollers 95 and 96 are actuated by springs 124 and 125 positioned at the end of the housing with the springs connected to the ends of arms 126 and 127, respectively and to adjusting screws 128 and 129, the outer ends of which are provided with thumb nuts 130 and 131, respectively, and the nuts are positioned against the plates 132 and 133 through which the screws 128 and 129 extend. By this means the tension on the rollers 95 and 96 is adjustable.

The shrimp are fed to the machine through the positioning chute 13, the upper edge of which is provided with a flange 134 that is mounted on the upper end of the housing and the chute is held in position by a bracket 135 which is mounted on the end wall 136 by screws 137 and 138, and a projection 139 that is connected by a pin 140 in bars 141 on the ends of the guide plates 56 and 57.

The centering rod 14 is suspended by outwardly diverging arms 142 and 143 to which it is attached by spaced rivets 144 and 145 and the upper ends of the arms are pivotally mounted on a rod

100 extending through one side of the chute 15, as shown in Figure 6. A spring 101 is provided on the rod 100 and one end of the spring is positioned to engage a stud 102 on the outer surface of the chute 15 and the opposite end 103 extends over the rod 100 of the indicating rod. In the manner that rod 99 is positively moved into engagement with the article passing into the receiving hopper the spring moves into the path of movement of the rod 100 and thereby indicates that an article has been delivered to the hopper.

The upper end of the chute 15 is provided with an arcuate member 104 (Fig. 2) and the members are provided with corresponding shoulders 105 and 106, respectively over which the ends of coacting supporting bars are positioned.

The inside flat plate member 15, as shown in detail in Figure 2, is provided with a pin 107, the ends of which are positioned in recesses 108 in the sides of a guide member 109 which is disposed adjacent the plate member 15 and extends substantially parallel thereto. The guide member 109 is provided with a recessed bar 110 and a bar 111 disposed within a recessed portion 112 on the inside. The bar 110 is provided with an elongated slot 113 at the outer end thereof and the member is provided with a recessed portion 114 in which the end of a screw 115 is disposed.

The inside member 109 is provided with a pin 116, and the pin 116 is positioned in slots 117 of a fork 118 that is pivotally connected to a bracket 119 by a shaft 120. The opposite end of the shaft is provided with an arm 121 which is pivotally connected to a pin 122 on a rod 123 by a screw 124. A pin 125 on the opposite end of the rod is connected to a screw 126 by a screw 127.

The outer end 128 extends through a chute 129 that is provided with a threaded outer surface and that is threaded through a guide bracket 130, the sections of which are fastened together by a screw 131 having a knurled head 132 on the outer end thereof. A lock washer 133 is threaded on the screw 131 and positioned against the end of the bracket 134 and the washer is secured in position by a threaded nut 135. The opposite end of the member 128 is provided with a knurled disc 136 and the outer end of the member 137 is provided with a cap 138 which is threaded on the screw and positioned against the outer end of the chute. The member 137 is urged outwardly by a spring 139. By this means the position of the knife blades 13 is readily adjusted and should the knife engage an obstruction it may pass beyond the perimeter of the flexible disc.

A stop 140 is pivotally connected on a bracket 141 by a pin 142 and this stop is positioned to prevent the knife holder 143 passing out of the slot 144.

The opening 145 at the end 127 is provided with a projection 146 by which plate 147 is connected by a pin 148 and the plate 147 is secured to the under surface of the aluminum plate 15.

A bracket 149 extends across the upper end of the discharge chute with the ends connected to the sides of the chute by studs 150 and 151 and the bracket is provided with a U-shaped member 152 through which a lever 153 extends as illustrated in Figure 4. With the lever secured in the socket 152 the spring rod 154 is positioned to spray liquid on the discs as the discs pass in engagement with the cleaning roller 16.

A spring finger 155 is mounted on the bracket 149, under the socket 152, as shown in Figure 4 and the tip of the finger extends between the flexible discs 14 and 15 for removing debris after leaving the shaft and with shaded removed

by the rotary screw 12, and the ash received by rotary fingers 156. The fingers are then removed from the flexible discs by a spring 157 and dropped into the discharge chute 158 from which they are removed and disposed.

A spring finger 159 is provided between each adjacent pair of the flexible discs 14 and 15 and the finger is positioned to remove the debris from the discs after the ash has been removed by the rotary fingers 156.

A flexible member 160 is provided above the upper end of the chute 15 and the member is secured in position by a screw 161 and a screw 162 and the member is provided with an opening 163 which is positioned over the opening 164 in the chute 15 and the member 160 is provided with a recessed portion 165 to receive the upper end of the chute 15 and the member 160 is positioned over the opening 164 in the chute 15.

A rotary screw member 166 is mounted in the chute 15 and the member is provided with a recessed portion 167 and a recessed portion 168 and the member is positioned in the chute 15 and the ends of the member are positioned in the recessed portions 167 and 168 and the member is positioned over the opening 164 in the chute 15 and the member is positioned over the opening 164 in the chute 15 and the member is positioned over the opening 164 in the chute 15

said frame structure for a pair of opposed rubber discs each having annular recesses on their opposed faces adjacent the periphery thereof, means on said frame structure for mounting said discs in their lower portions of near abutment, means mounted on said frame structure for rotating said discs, means operatively associated with said discs for directing the shrimp from said discs to said discharge chute, and means positioned in said V-shaped delivery chute to direct a stream of water under high pressure in a manner so as to deliver the shrimp from said delivery chute to said discs.

3. A machine for deveining shrimp comprising a frame structure, circular supporting means on said frame structure for a pair of opposed discs with lower portions of the peripheries of said discs in near abutting relationship and the remaining sections of the peripheries of said discs being in progressively spaced relationship with each other, a rotary cutter mounted on said frame structure beneath said discs and extending into the area between said discs at their lower sections of near abutment, means mounted on said frame structure for feeding shrimp to said discs, means operatively associated with said discs and cutter for rotating the same, and means mounted on said frame for removing the shrimp from said discs after the shrimp have passed over said rotary cutter.

ALSTON B. MCKINSTRY.

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2,267,899	Grayson	Nov. 25, 1941
2,268,097	Grayson	Nov. 25, 1941
2,300,133	Hallerty	Aug. 18, 1942
2,478,580	Christiansen	May 17, 1949

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Number	Country	Date
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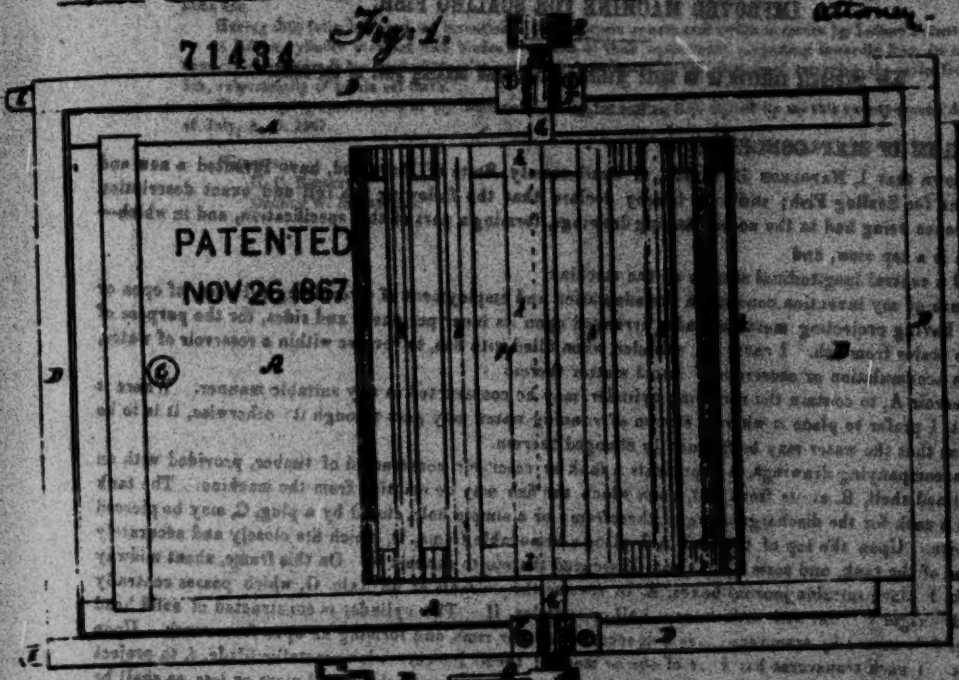
N. B. White's

Machine for Sawing Felloes

Napoleon Bonaparte White, Inventor, by David A. Burr Attorney.

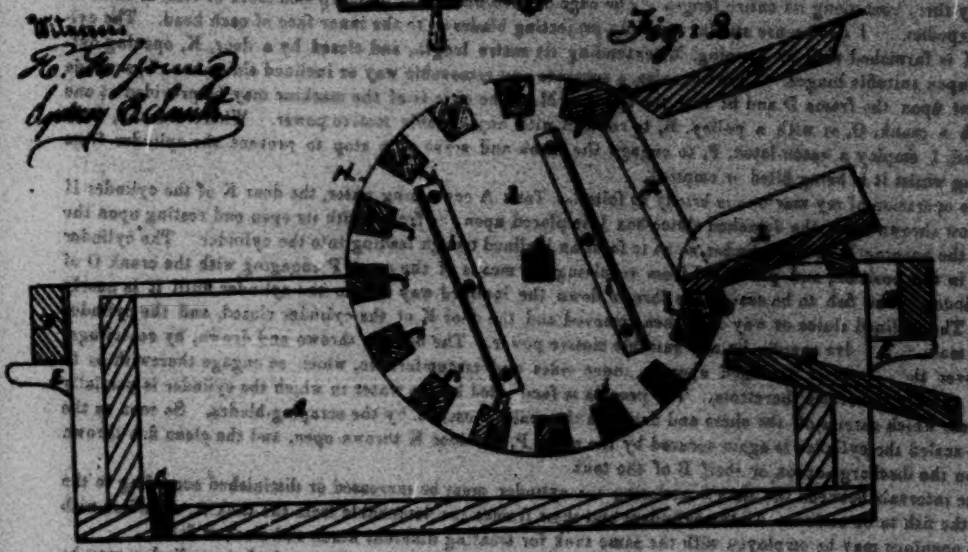
71434

Fig: 1.



Witnesses
H. Holcombe
Sydney D. Smith

Fig: 2.



United States Patent Office.

NAPOLEON BONAPARTE WHITE, OF CECIL COUNTY, ASSIGNOR TO HIMSELF AND FREDERICK B. HOFFMAN, OF BALTIMORE, MARYLAND.

Letters Patent No. 71,434, dated November 26, 1867.

IMPROVED MACHINE FOR SCALING FISH.

The Schedule referred to in these Letters Patent and making part of the same.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, NAPOLEON B. WHITE, of Cecil county, State of Maryland, have invented a new and useful Machine for Scaling Fish; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, forming a part of this specification, and in which—

Figure 1 is a top view, and

Figure 2 a central longitudinal section of the machine.

The nature of my invention consists in the adaptation and employment of a revolving cylinder, of open or lattice-work, having projecting movable blades arranged upon its inner periphery and sides, for the purpose of removing the scales from fish. I cause the cylinder, when filled with fish, to revolve within a reservoir of water, to prevent an accumulation or accretion of vivid matter thereon.

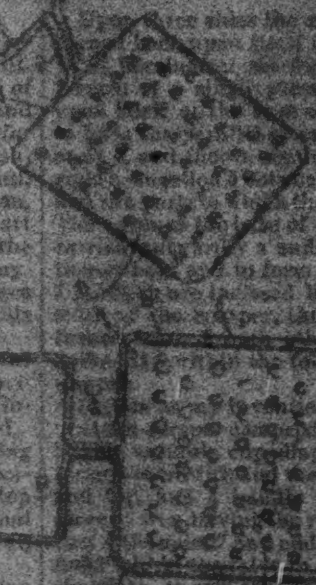
The reservoir A, to contain the revolving cylinder, may be constructed in any suitable manner. Where it is convenient, I prefer to place it where a stream of running water may pass through it; otherwise, it is to be so arranged as that the water may be frequently changed therein.

In the accompanying drawings, A represents a tank or reservoir constructed of timber, provided with an apron or inclined shelf, B, at its front end, upon which the fish may be emptied from the machine. The tank is fitted with a cock for the discharge of water therefrom; or a simple hole, closed by a plug, C, may be pierced for the purpose. Upon the top of the tank A I place a removable frame, D, which fits closely and accurately over the sides of the tank, and rests upon cleats E secured thereto to support it. On this frame, about midway of its length, I place suitable journal-boxes, E, to receive the journals of an axle, G, which passes centrally through, and is rigidly connected with, a large hollow cylinder, H. This cylinder is constructed of solid head or end pieces *h*, united by transverse bars *h*, secured to their rims, and forming an open framework. Upon the inner face of each transverse bar *h* of one or more of them I secure a long metallic blade, *i*, to project inwardly therefrom along its entire length. The edge of each blade may be sharp and more or less, as shall be found expedient. I also secure similar inwardly-projecting blades *i* to the inner face of each head. The cylinder H is furnished with an opening, M, extending its entire length, and closed by a door, K, opening outwardly upon suitable hinges. I provide, also, a separate and removable way or inclined sloping-box, L, so made as to rest upon the frame D and fit into the opening M. The axle G of the machine may be provided at one end with a crank, O, or with a pulley, R, to connect with any suitable motive power. Where a crank, O, is employed, I employ a catch-latch, P, to engage the crank and serve as a stop to prevent the cylinder from revolving whilst it is being filled or emptied.

The operation of my machine is briefly as follows: Tank A containing water, the door K of the cylinder H being now thrown open, the detached sloping-box L is placed upon the frame D, with its open end resting upon the edge of the opening M in the cylinder, so as to form an inclined trough leading into the cylinder. The cylinder is held in this position, and prevented from revolving, by means of the catch P engaging with the crank O of the cylinder. The fish to be scaled are thrown down the inclined way L into the cylinder until it is nearly filled. The inclined sloping or way L is then removed and the door K of the cylinder closed, and the cylinder is then made to revolve rapidly by any suitable motive power. The fish are thrown and drawn, by centrifugal force, over the scraping-blades arranged upon the inner sides and circumference, which so engage therewith as to remove quickly the scales therefrom. The process is facilitated by the water in which the cylinder is partially immersed, which carries off the slime and detaches the scales loosened by the scraping-blades. So soon as the fish are scaled the cylinder is again secured by the catch P, the door K thrown open, and the clean fish thrown out upon the discharge-apron or shelf B of the tank.

The interval between the plates *i* enclosing the cylinder must be increased or diminished according to the size of the fish to be scaled. As the cylinders and their frames are detachable from the tank A, cylinders with various openings may be employed with the same tank for treating different kinds and sizes of fish.

The blades *i*, instead of being formed in one unbroken length from end to end of the cylinder, may be



(No Model.)

O. O. MACKLETT.

FISH SCRAPER.

No. 565,099. Patented Aug. 18, 1896.

Fig. 1.

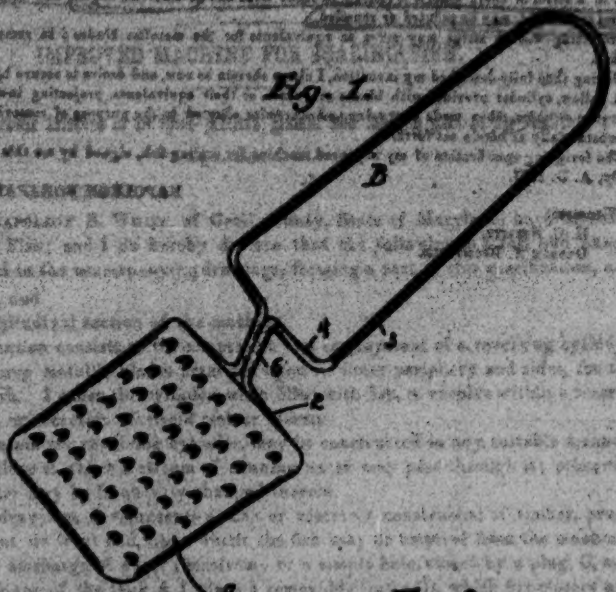


Fig. 2.

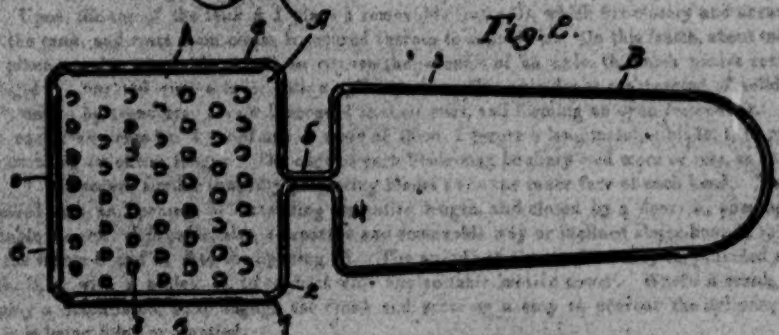


Fig. 3.

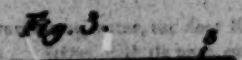
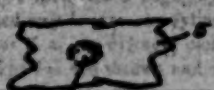


Fig. 4.



Witnesses:
A. R. Kinsey
F. Otto Hammond

Inventor:
Otto C. Macklett

UNITED STATES PATENT OFFICE.

OTTO C. MACKLETT, OF [illegible], MINNESOTA.

FISH-SCRAPER.

SPECIFICATION forming part of Letters Patent No. [illegible], dated [illegible].

Application filed [illegible]. Serial No. [illegible].

To all whom it may concern:

Be it known that I, OTTO C. MACKLETT, residing at 357 Canada street, in the city of St. Paul, in the county of Ramsey and State of Minnesota, have invented certain new and useful Improvements in Fish-Scrapers, for the purpose of removing the scales from fish, and I do declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, which form a part of this specification.

My invention relates to improvements in scaling fish, and has for its object the provision of a device which shall be simple and inexpensive to make and easily operated.

In the accompanying drawings, which form a part of this specification, Figure 1 is a perspective view of my device. Fig. 2 is a plan view. Fig. 3 is a longitudinal sectional view through one of the teeth, and Fig. 4 is a top view of the same.

The device consists of the handle portion A and the scaling plate or scraper B. The scraper is preferably made of tin cut to the desired shape, and having [illegible] the body thereof by any suitable [illegible] the ends of the teeth being pressed below the plane of the plate and slightly [illegible] as shown in Figs. 2 and 3.

[illegible] bent back upon itself [illegible] the handle [illegible] a strip of tin, [illegible] bent back upon itself [illegible] as at A, and thence again parallel to form a rigid connection between the handle proper and the parts to which the scraper is secured. The ends of the arms of the connection are carried outwardly a sufficient distance, and [illegible] at 2 to form the parallel pieces [illegible] connected by the plate 3, in the sides of which [illegible] are formed, being made [illegible] and bent [illegible] to the top of the scraper.

[illegible] plate [illegible] the plate [illegible] the [illegible] plate [illegible] of a single piece of wire having the right connecting portion 4 the sides 7 and ends thereof being connected within the body of the sides and top of the plate, as and for the purpose set forth.

In testimony whereof I affix my signature [illegible] presence of two witnesses.

OTTO C. MACKLETT.

Witnesses:

[illegible]

[illegible]

O. KELL.

FIRE SCALING DEVICE.

APPLICATION FILED JULY 12, 1911.

1,028,736. **Patented June 4, 1912.**

Fig. 1.

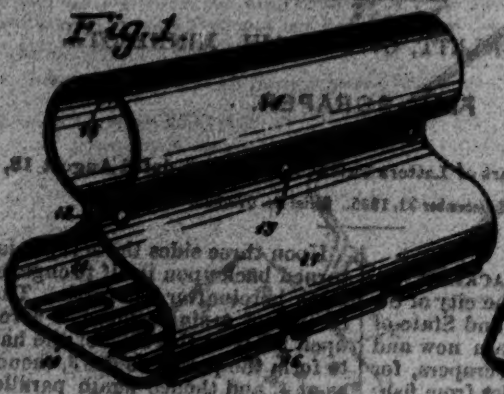


Fig. 3.

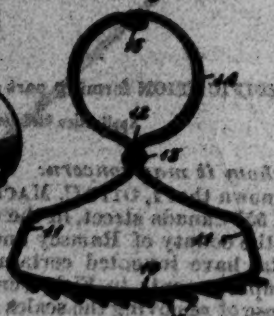


Fig. 4

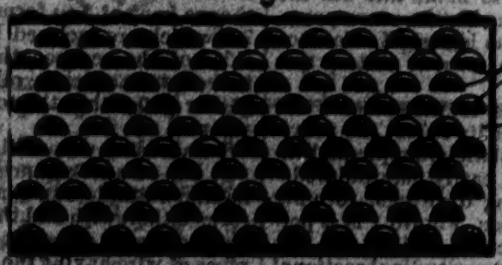


Fig. 2.

Witnesses.
W. A. Fisher.
A. D. Hague.

Inventor.
Otto Kell.
by J. Ralph Dewig Atty

UNITED STATES PATENT OFFICE.

OTTO KELL, OF DES MOINES, IOWA.

FISH-SCALING DEVICE.

1,033,726. Specification of Letters Patent. Patented June 4, 1912.

Application filed July 22, 1911. Serial No. 639,884.

To all whom it may concern:

Be it known that I, OTTO KELL, a citizen of the United States, residing at Des Moines, in the county of Polk and State of Iowa, have invented a certain new and useful Fish-Scaling Device, of which the following is a specification.

The object of my invention is to provide a device of simple and inexpensive construction, designed to be used in removing scales from fish.

More specifically it is my object to provide an improved fish scaling device constructed of a single piece of material having lugs formed at the bottom thereof, and arranged in rows, said lugs being designed to engage the scales of the fish to be cleaned, and thereby remove the scales when the device is moved in proper direction over the fish.

My invention consists in certain details, in the construction, arrangement and combination of the various parts of the device, whereby the objects contemplated are attained, as hereinafter more fully set forth, pointed out in my claim and illustrated in the accompanying drawings, in which—

Figure 1 shows a perspective view of one form of my device, the scale removing lugs therein shown, being substantially rectangular in shape. Fig. 2 shows a bottom view of the same. Fig. 3 shows a vertical, transverse, central sectional view of a slightly modified form of my invention, the lugs therein shown, being semi-circular in shape, and Fig. 4 shows a bottom view of the form shown in Fig. 3.

Referring to the accompanying drawings it will be seen that the forms of my device therein shown, are constructed of a single piece, preferably of sheet metal bent and riveted together at certain points to give it the desired shape.

The device comprises a bottom portion 10 curved upwardly to form side members 11. The side members are extended inwardly and connected to each other at 12, by means of rivets 13, or the like, to thereby add strength and rigidity to the device. The side members are then extended upwardly and formed into a cylindrical handle 14, of a convenient size and shape to fit the operator's hand. The ends of the sheet metal are then connected together at 15.

Formed on the bottom portion 10, at intervals, is a plurality of lugs 16 arranged in rows and staggered, said lugs being extended downwardly, and at an acute angle to the bottom portion. These lugs are constructed integrally with the bottom portion and are preferably formed by being stamped out of the material of the bottom portion.

It is obvious that when the operator moves the device over the fish to be scaled, in a direction opposite to that in which the scales extend, the downwardly extending lugs will engage the scales of the fish in such a manner as to quickly and easily remove the scales. On account of the lugs being extended downwardly, and at the proper angle to engage the scales of the fish, it is not necessary for the operator to tilt the device in any manner when scaling a fish, and the danger of cutting into the flesh of the fish is thereby eliminated.

My purpose for arranging the lugs on my device staggeredly is to have them conform, in as far as possible, with the arrangement of the scales on a fish, and thereby each lug will engage but one scale at a time and the scales will be removed in their successive order. Furthermore there being several rows of lugs arranged on the bottom of each device it is obvious that it will require but a very small number of strokes of the device to thoroughly remove all of the scales from a fish.

A further advantage gained, by arranging the lugs as shown, is in providing the device with the greatest possible number of scale removing members and at the same time not materially lessening the strength of the device, nor in any way adding to its weight.

It will also be noticed that I have provided a way in which the fish scales will be retained within the device, thereby eliminating one of the most objectionable features in cleaning a fish, due to the fact that when a knife or some form of straight blade is used, the scales will be scattered about over a considerably large area.

When my device is employed, it is obvious, that the scales removed by each of the downwardly extending lugs will be scooped upwardly on the lugs and into the interior of the body portion through the adjacent openings.

I claim as my invention:

A fish scaling device, comprising a bent

provided with inclined lugs on its lower surface and with openings adjacent to each lug respectively designed to permit scales removed by the lugs to pass through said base, upwardly and inwardly extending sides secured together at a point spaced apart from the base to leave a space above the base open at both ends, said sides being further extended in substantially cylindrical form to constitute a handle.

Des Moines, Iowa, July 24, 1911.

OTTO KELL.

Witnesses:
M. WALLACE,
M. PETERSON.

Aug. 15, 1950 C. W. CASTON 2,518,448

ENDLESS BAND ABRADING DEVICE

Filed Jan. 28, 1947

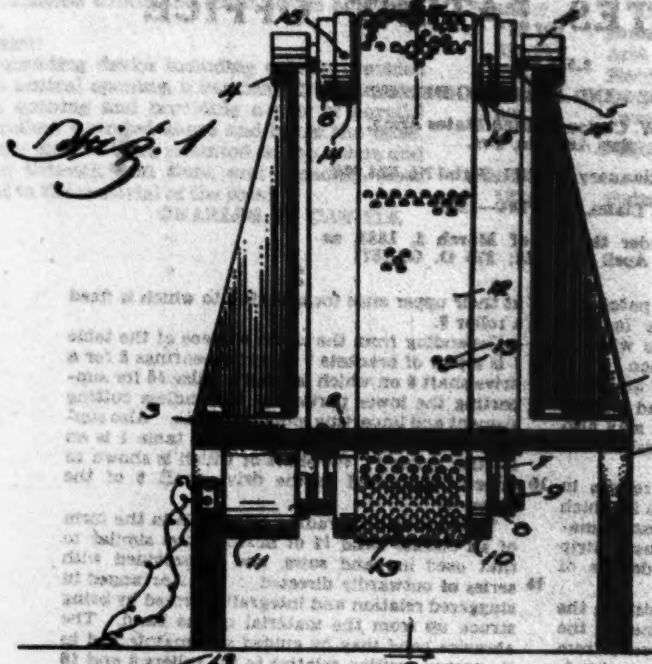


Fig. 1

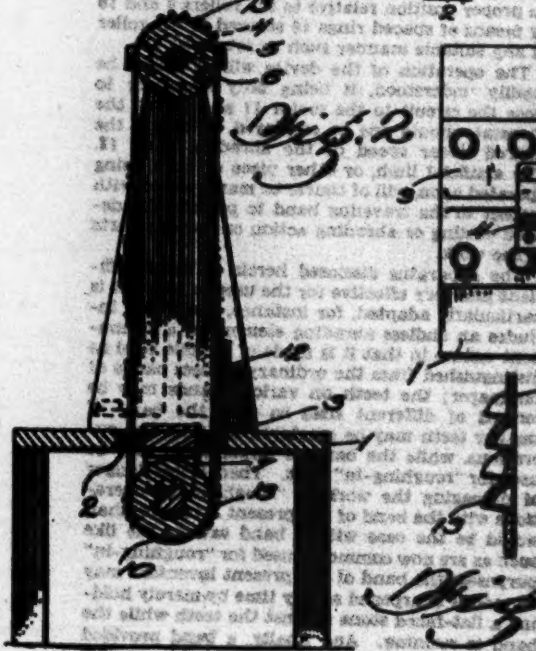


Fig. 2

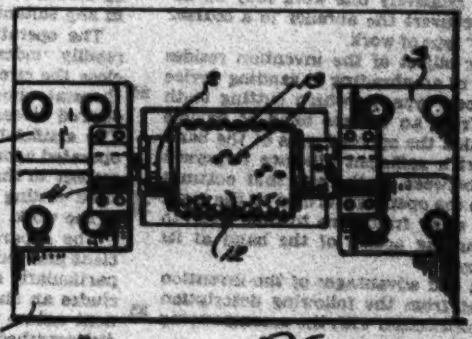


Fig. 3

Fig. 4

INVENTOR.
Charles W. Caston
By O. J. Cockerton,
ATTORNEY

Patented Aug. 15, 1950 2,518,448

UNITED STATES PATENT OFFICE

2,518,448

ENDLESS BAND ABRADING DEVICE

Charles W. Caston, United States Army, San Antonio, Tex.

Application January 23, 1947, Serial No. 724,962

1 Claim. (Cl. 144—123)

(Granted under the act of March 3, 1883, as amended April 30, 1928; 370 O. G. 757)

1

The invention described herein, if patented, may be manufactured and used by or for the Government for governmental purposes without the payment to me of any royalty thereon

The present invention relates to an abrading apparatus, and while primarily intended for use in the production of artificial limbs, it may also be used in connection with the finishing or "roughing in" of many other articles.

A primary object of the invention resides in the formation of an abrading apparatus in which the abrading element is of a more or less permanent nature, in contradistinction to the usual strip of sandpaper generally employed in devices of this time.

Another object of the invention consists in the provision of an abrading apparatus wherein the abrading element may be readily sharpened from time to time, and wherein the teeth of an abrading element for relatively fine work may be enlarged so as to convert the abrader to a coarser or "roughing-in" type of work.

A still further object of the invention resides in the provision of an abrading or sanding device of the endless-belt type, in which cutting teeth are struck up from an endless band of flexible steel, and in which the opposed runs of the band are spaced apart a sufficient distance to permit of access therebetween to the end that cuttings passing through the openings formed by the teeth may be cleared away from time to time so as to maintain the cutting action of the band at its highest efficiency.

Other objects and advantages of the invention will be apparent from the following description when taken in connection with the accompanying drawings in which

Fig. 1 is a front elevational view illustrating a complete embodiment of the invention;

Fig. 2 is a vertical sectional view therethrough, taken on line 2—2 of Fig. 1;

Fig. 3 is a plan view of the apparatus; and

Fig. 4 is an enlarged fragmentary sectional view through a portion of the abrading element.

Referring to the drawings in greater detail, the numeral 1 refers to a table or the like upon which the operating mechanism is mounted. The table top is provided with a central opening and a hinged cross-bar 2 which provide spaced parallel slots for the spaced runs or flights of an abrading band. The bar 2 may, of course, be swung to vertical position when a band is to be installed or removed. Mounted on the upper surface of the table 1 at the opposite ends thereof are opposed brackets or standards 3 provided with bearings 4

2

at their upper ends for a shaft 5 to which is fixed a roller 6.

Depending from the under surface of the table 1 is a pair of brackets 7 carrying bearings 8 for a drive shaft 9 on which is fixed a roller 10 for supporting the lower portion of the endless cutting element and imparting motion thereto. Also supported on the under surface of the table 1 is an electric motor 11, the shaft of which is shown as directly connected to the drive shaft 9 of the roller 10.

The cutting or abrading element is in the form of an endless band 12 of flexible steel similar to that used in band saws, and is provided with series of outwardly directed h 13 arranged in staggered relation and integrally formed by being struck up from the material of the band. The abrasive band may be guided and maintained in its proper position relative to the rollers 6 and 10 by means of spaced rings 14 secured to the roller in any suitable manner such as setscrews 15.

The operation of the device will of course be readily understood, it being only necessary to close the circuit to the motor 11 and adjust the rheostat, should one be employed, to obtain the desired linear speed of the abrading band 12. The artificial limb, or other piece of work being operated upon, will of course be manipulated with respect to the traveling band to provide the desired cutting or abrading action on various parts of the work.

The apparatus disclosed herein is highly efficient and very effective for the uses to which it is particularly adapted, for instance, the device includes an endless abrading element of a permanent nature in that it is made of flexible steel as distinguished from the ordinary endless bands of sandpaper; the teeth on various bands may be formed of different sizes so that the band of smaller teeth may be employed for finishing operations, while the band of larger teeth may be used for "roughing-in" work. There is less danger of damaging the work in "roughing-in" operations with the band of the present invention than would be the case with a band saw or the like such as are now commonly used for "roughing-in" purposes; the band of the present invention may be readily sharpened at any time by merely holding a flat-faced stone against the teeth while the band is running. And finally, a band provided with small teeth for fine work may be readily converted to one for "wearing" or "roughing-in" by merely repunching the band to provide larger teeth.

A preferred embodiment of the invention has

been shown and described herein in detail, but it is to be understood that the present disclosure is intended as illustrative of the invention rather than in a limiting sense, and that various minor changes in details of construction are intended to be included within the scope of the appended claim.

I claim:

An shredding device including a table provided with a central opening, a bar hinged to one edge of the opening and providing a pair of parallel slots, rollers mounted above and below the table, a flexible endless band mounted on the rollers and passing through said slots, and shredding teeth formed in the material of the band.

CHARLES W. CASTON.

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The following references are of record in the file of this patent:

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782,245	Herrmann	Feb. 14, 1905
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2,438,737	Tavano	July 6, 1947

FOREIGN PATENTS

Number	Country	Date
122,970	Switzerland	Sept. 2, 1929

PLAINTIFF EXHIBIT 133

DEEPSOUTH *Packing Company*

3536 LOWERLINE ST. NEW ORLEANS 25, LA.

PACKERS OF

FRESH CANNED AND FROZEN FOODS

Paid Cyril #1 Bayou Inc. 6-6

SOLD TO • Authement Packing Company, Inc.
• Houma, Louisiana
•

Terms: • Against account payable.
•
•

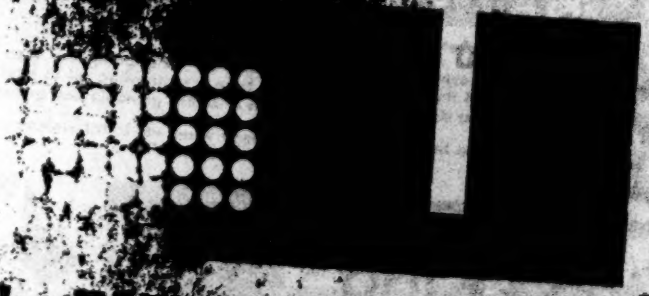
DATE	INVOICE NO.	TERMS	BROKER'S ORD. NO.	VIA	F.O.B.	BROKER
3/26/62	#8332	See Above	Mr. Huey Authement	Our Truck	Houma, La.	Direct

QUANTITY	DESCRIPTION	PRICE	AMOUNT
One	- SKINNETTA SHRIMP DEVEINER Machine, model SV465, Serial No. 1106 powered by a ½ H.P.,3 phase, 60 cycle [illegible] volt, totally enclosed Syncrogear electric motor; complete with [illegible]EED CONVEYOR powered by a 1/3 H.P., 220 volt, 3 phase, 60 cycle electric motor; a DISCHARGE CONVEYOR powered by a 1/[illegible].P., 220 volt, 3 phase, 60 cycle electric motor and a SKINNETTA JET WASHER.		$ 12,500.00

D-95

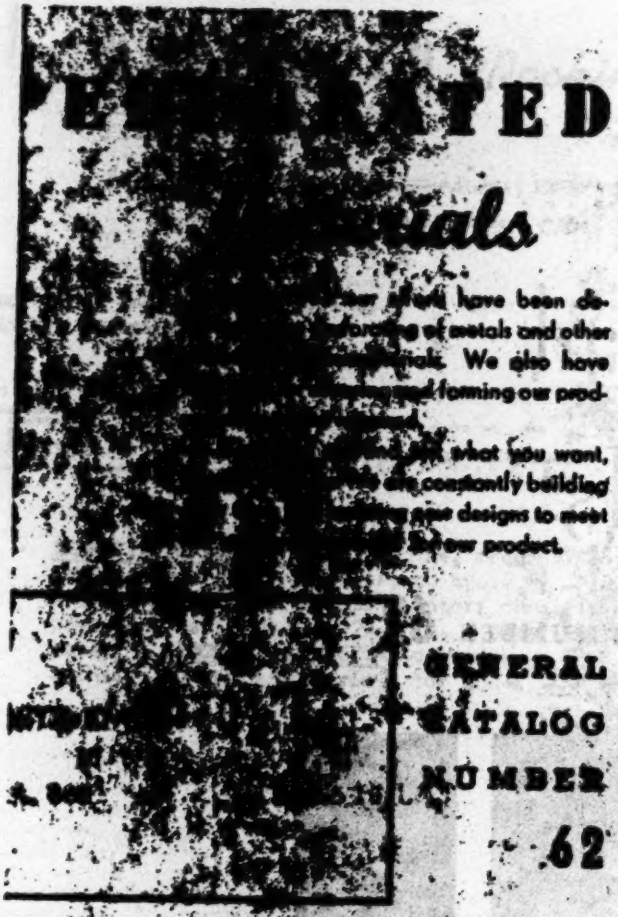
Perforated Materials

NUMBER 62



The HERRINGTON & KING
Perforating Company

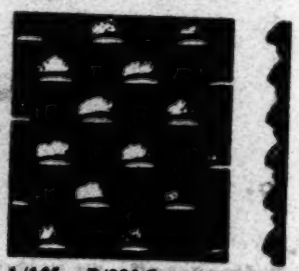
28286


GENERAL
CATALOG
NUMBER
62
The
Harrington & King
PERFORATING
Co.
MAIN OFFICE AND FACTORY
5655 FILLMORE STREET • CHICAGO 44
CHICAGO PHONE MANSFIELD 6-1800 • NEW YORK BARKLEY 7-0209

THE HARRINGTON & KING PERFORATING CO.

1 mm. x 12 1/2" mm. Lip Slot
(.040" x .47")
9-32" centers straight

Lip slot sizes are designated by the dimensions of the opening at the bottom of the lip.



1/16" x 7/32" Crescent Lip Slot
1/4" ctr. diagonal
For pulping coffee berries

In this crescent lip slot the size is designated by the dimensions of the opening.

1/2" x 1/2" Lips. 9/16" centers and staggered

Lip sizes are designated by the dimension of the face of the lip. This type of lip perforation is used in many machines built for threshing, separating and cleaning grains. It is also used for corn crib siding.

A complete list of the many sizes available will be sent upon request.

Lips
Burred
Tapered
Stubbed

A heavy lip-type perforation used as a well screen

D-248

Herbert Zander & Company Limited

P. O. BOX 1262
NASSAU, BAHAMAS

CABLES:
HERBZANDER, NEW YORK
TELEPHONE: LT 1-1313

New York, N.Y., April 2, 1963

Please Reply to: NEW YORK OFFICE
ONE ROCKEFELLER PLAZA
NEW YORK 20, N. Y.

Our Reference No. L-114

Your Reference No.

Deep South Packing Co. Inc.,
3536 Lowerline St.
New Orleans 12, La.

Attention: Mr. Ray Skrmetta, Pres.

Gentlemen:

Thank you for your letter of March 25th, containing your offering for peeling and deveining machines.

We have conveyed the information to our principals in Brazil and as soon as we hear from them, we shall get in touch with you.

Sincerely yours,

HERBERT ZANDER & CO. LTD.

Leonard Weisinger.

LW:ml

C O P Y

June 2, 1969

Louis B. Claverie, Esquire
Phelps, Dunbar, Marks, Claverie & Sims
Hibernia Bank Building
New Orleans, Louisiana

Re: Laitram Corporation vs. Deepsouth Packing Co., Inc. CA 67-961

Dear Mr. Claverie:

Because of the recent preliminary opinion of Judge Rubin in the above-referenced matter, we have had some inquiries from devoiner customers of Deepsouth in foreign countries as to any effect the decision may have on them.

Hence, to properly advise them, it would be appreciated if you could provide us with a list of foreign countries in which foreign patents have been secured relating to Laitram's slitter and drum devoiner.

Yours very truly,

C. Emmett Pugh

CEP/dss

cc: Harold J. Birch, Esquire
Guy Shoup, Esquire
Mr. Ray Shrmatis

SUMTER D. MARKS, JR.
LOUIS B. CLAVERIE
JOHN W. SIMS
J. BARNWELL PHELPS
CHARLES E. DUNBAR, III
BLAKE WEST
J. BARBEE WINSTON
JOHN G. WEINMANN
JACK M. GORDON
GEORGE W. HEALY, III
CHARLES M. LANIER
JOHN POITEVENT
JAMES B. KEMP, JR.
PETER G. BURKE
GERARD T. GELPI
HARRY S. REDMON, JR.

RICHARD C. BROWN
JAMES H. ROUSSEL
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EUGENE R. PREAUS
EDWIN K. LEGNON
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PHILIP R. FARNSWORTH, JR.
MARGOT MAZEAU
EDWARD J. BRANDAO
PAUL M. HAYGOOD

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS
COUNSELLORS AT LAW
HIBERNIA BANK BUILDING
NEW ORLEANS 70112

AREA CODE 504-525-1311

EDMOND PHELPS 1912-1950
CHARLES E DUNBAR, JR 1915 1955

OF COUNSEL
JAS. HY BRUNS
ASHTON PHELPS

CABLE ADDRESS
HOWSPENCER

14,840

June 7, 1969

C. Emmett Pugh, Esquire
Pugh & Allen
Attorneys at Law
500 St. Peter Street
New Orleans, Louisiana 70116

Re: Laitram Corporation vs.
Deepsouth Packing Co., Inc.
CA 67-861

Dear Emmett:

We are in receipt of your letter dated June 2, 1969, addressed to our Mr. Claverie. Mr. Claverie is presently on vacation in Europe, and he has asked me to look after the above captioned matter during his absence.

On behalf of Laitram Corporation we hereby inform you that we must respectfully decline to provide you with the information requested by your letter dated June 2.

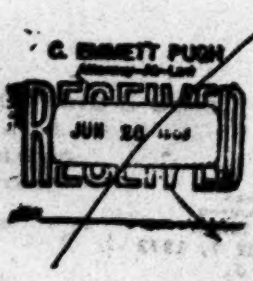
Sincerely yours,

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

By: Jack M. Gordon

Jack M. Gordon

10/10
cc: Guy W. Shoup, Esquire
The Laitram Corporation



MINUTE ENTRY
June 23, 1969
RUBIN, J.

THE LAITRAM CORPORATION

versus

DEEPSOUTH PACKING CO., INC.

CIVIL ACTION

NO. 67-861

SECTION "C"

* * * * * * * * * * *

A further conference was held on June 18, 1969, at 4:30 P.M. Counsel reached an agreement with respect to recuse of a certain deveiner pending agreement on a form of judgment. Counsel for defendant delivered information in respect to foreign depositions in response to Court instructions, and full rights were reserved to defendant as set forth in its letter.

Louis H. Holinger, Esq.
Guy W. Shemp, Esq.
Louis B. Claverie, Esq.
Harold J. Birch, Esq.
C. Emmett Pugh, Esq.

JUN 26 1969

182

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FEB 7 1972
FILED
BENJAMIN W. REISCH
CLERK

MINUTE ENTRY
FEBRUARY 7, 1972
RUBIN, J.

THE LAITRAM CORPORATION	CIVIL ACTION
versus	NO. 67-861
DEEPSOUTH PACKING CO., INC.	SECTION "C"

***

In order to correct clerical errors in the minute entry of June 23, 1969, the last sentence of that entry is hereby amended to read:

"Counsel for plaintiff delivered information in respect to foreign deveiner patents in response to Court instructions, and full rights were reserved to plaintiff as set forth in its letter."

C. EMMETT PUGH
Attorney-At-Law
RECEIVED
FEB 10 1972
BY

FEE
PROCESS
X CHARGE
CRD
DOCUMENT NO. 787

FEB 7 1972 (4)

GUNTER D. MARKS, JR.
LOUIS B. CLAVERIE
JOHN W. SIMS
J. BARNWELL PHELPS
CHARLES E. DUNBAR, III
BLAKE WEST
J. BARBEE WINSTON
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COUNSELLORS AT LAW
HIBERNIA BANK BUILDING
NEW ORLEANS 70112

AREA CODE 504-529-1311

EDMOND PHELPS 1912-1950
CHARLES E. DUNBAR, JR. 1915-1959

OF COUNSEL
JAS. HY. BRUNS
ASHTON PHELPS

CABLE ADDRESS
HOWSPENCER

TELEX 14,840

June 18, 1969

C. Emmett Pugh, Esquire
Pugh & Allen
500 St. Peter Street
New Orleans, Louisiana 70116

Re: The Laitram Corporation vs.
Deepsouth Packing Co., Inc.,
Civil Action 67-861

Dear Emmett:

With further reference to your letter of June 2, 1969, addressed to our Mr. Claverie, requesting a list of foreign countries in which foreign patents have been secured relating to Laitram's slitter and drum deveiner, and in view of the expressions by Judge Rubin during our conference this morning, we have requested Laitram to prepare a schedule providing you with the information you requested.

Accordingly, we are attaching hereto such a schedule which reflects the information shown in the Laitram files as to the foreign countries in which the particular foreign patents about which you inquired are in force. We wish to emphasize that the attached list reflects solely data that is contained in the files of Laitram Corporation, and is in no way intended to be,

nor could it be, a representation to you of the actual current legal status of any particular foreign patent in any particular foreign country. We are sure that you will understand the impossibility of our making any such representations in view of the complexities of the foreign patent laws and the varied circumstances under which foreign patent protection might have been lost without the knowledge of, or because of inaction of, Laitram Corporation.

We trust that this compilation will serve your purpose in properly advising the Deveiner customers of Deepsouth in foreign countries.

Very truly yours,

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

By: Jack N. Gordon

Jack N. Gordon

10/10
Encl.
cc: Honorable Alvin B. Rubin
Guy W. Shoup, Esquire
The Laitram Corporation

June 18, 1969

COUNTRY	SLITTER	DEVEINER
Australia	X	X
Belgium	X	
Brazil	X	
Canada	X	
Cuba	X	
Denmark	X	
France	X	
Great Britain	X	
Japan	X	
Mexico	X	
Norway	X	X
Panama	X	
Phillipines	X	
Spain	X	
Sweden	X	
So. Korea	X	
Argentina	X	
Chile	X	X
Columbia	X	
Costa Rica	X	
El Salvador	X	
Guatemala	X	
Honduras	X	
Jamaica	X	
Nicaragua	X	X
Puerto Rico	X	
Tangiers	X	
Venezuela	X	
British Guiana	X	X
Ceylon		X
Ecuador		X
Egypt		X
Greece		X
New Zealand		X
Pakistan		X
Iceland		X

SUMTER D. MARKS, JR.
LOUIS B. CLAVERIE
JOHN W. SIMS
J. BARNWELL PHELPS
CHARLES E. DUNBAR, III
BLAKE WEST
J. BARBEE WINSTON
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EDMOND PHELPS 1912-1950
CHARLES E. DUNBAR, JR. 1915-1968

OF COUNSEL
JAS. HY. BRUNS
ASHTON PHELPS

CABLE ADDRESS
HOWSPENCER

June 27, 1969

14,840-17A

C. EMMETT PUGH
Attorney-At-Law

RECEIVED
JUN 27 1969
BY:

C. Emmett Pugh, Esquire
Attorney at Law
500 St. Peter Street
New Orleans, Louisiana 70115

Copy sent to
Judge Beer
7/2/69
dss

Re: The Laitram Corporation vs.
Deepsouth Packing Company, Inc.
Civil Action No. 69-821

Dear Emmett:

This will refer to our letter to you dated June 18, 1969, by which we delivered to you a schedule prepared by The Laitram Corporation indicating the names of foreign countries in which they had foreign patents for either shrimp slitters or shrimp deveiners.

Subsequently, by telephone call, you requested that we furnish you with a list of the numbers of the foreign patents reflected on the schedule. Although you had not requested this information originally in your letter of June 2, we indicated to you that we would attempt to get the information for you. Our client has now furnished this information to us by placing the applicable numbers next to the check marks on the schedule, and a copy thereof is enclosed for your information.

We have been informed by our client that the more thorough examination of their files brought about by the necessity of obtaining the foreign patent numbers has revealed that six of the patents listed on the schedule have expired. We regret that they were inadvertently shown on the schedule which we furnished you on June 18th, and we assure you that the reason for the mistakes was the haste with which we asked our client to prepare the original schedule.

So that the enclosed schedule will conform to the schedule furnished on June 18th, we have asked our client to reflect on the enclosed schedule all of the patents shown on the June 18th statement, including those which have expired. The patents which have expired are as follows:

Country	Patent Number
Argentina	103,904
Nicaragua	571
Tangiers	311
Venezuela	7,082
Venezuela	6,839
Ecuador	1,080

As we indicated to you in our letter of June 18, 1969, we must emphasize that the attached list is in no way intended to be a representation of the actual current legal status of any particular foreign patent in any particular foreign country but is merely reflective of information in the Laitram files. The complexities and the varied circumstances under which foreign patent protection might have been lost

without the knowledge of, or because of inaction of, The Laitram Corporation makes it impossible for us to make any such representation.

Sincerely,

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

By: Jack M. Gordon

Jack M. Gordon

10/10
Encl.
cc: Honorable Alvin B. Rubin
Guy W. Shoup, Esquire
The Laitram Corporation

June 23, 1969

FOREIGN COUNTRIES IN WHICH LAITRAM HAS SECURED PATENT COVERAGE ON SLITTERS AND DEVEINERS

COUNTRY		SLITTER		DEVEINER
Australia	200,077	X	219,966	X
Belgium	531,891	X		
Brazil	54.882	X		
Canada	522.747	X		
Cuba	18.199	X		
Denmark	84.753	X		
France	1.112.141	X		
Great Britain	749.233	X		
Japan	240.377	X		
Mexico	58.123	X	66.384	X
Norway	87.841	X		
Panama	634	X		
Phillipines	518	X		
Spain	217.404	X		
Sweden	167.954	X		
So. Korea	487	X		
Argentina	103.904	X	107.962	X
Chile	16.189	X		
Columbia	7.124	X		
Costa Rica	995	X		
El Salvador	371	X		
Guatemala	706	X		
Honduras	1.579	X		
Jamaica	811	X	810	X
Nicaragua	871	X		
Puerto Rico	4.142	X		
Tangiers	211	X		
Venezuela	1.069	X	1.[illegible]	X
British Guiana			403	X
Ceylon			4.309	X
Ecuador			1.080	X
Egypt			1.777	X
Greece			17.338	X
New Zealand			113.771	X
Pakistan			106.741	X
Iceland			384	X

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION,	:	CIVIL ACTION
Plaintiff,	:	No. 67-861
versus	:	SECTION "C"
DEEPSOUTH PACKING CO., INC.,	:	
Defendant.	:	

: : : : : : : : : : : : : : : : : : : :

AFFIDAVIT OF LEROY E. DEMAREST

I, Leroy E. Demarest, depose and say:

1. I am the Treasurer and Office Manager of The Laitram Corporation and have had those duties and responsibilities for approximately five years. A part of those duties and responsibilities includes responsibility for subscribing to, and reviewing and examining, trade and industry journals and magazines received both regularly and irregularly in the offices of The Laitram Corporation and for placing advertisements of The Laitram Corporation in the trade and industry press.

2. The Laitram Corporation advertises in and receives, on a regular basis, both The Fish Boat, published monthly, and Fishing Gazette, published monthly. As a part of my duties, I have become familiar with the closing dates for changing, cancelling or inserting advertising and editorial copy for the named magazines. For The Fish Boat, the closing date is the first of the month prior to the cover month. For Fishing Gazette, the closing date

is the fifteenth day of the month prior to the cover month. I am further informed that changes, cancellations and insertions can be made even after the normal closing dates indicated.

3. The following exhibits to my affidavit are copies of the indicated pages from The Fish Boat for the indicated month:

Exhibit Number	Month	Page
1A	April, 1969	19
1B	April, 1969	6
1C	June, 1969	32
1D	September, 1969	10

The following exhibits to my affidavit are copies of the indicated pages from Fishing Gazette for the indicated months:

Exhibit Number	Month	Page
2A	December, 1968	58
2B	December, 1968	59
2C	December, 1968	Advertisers Index (front)
2D	December, 1968	Advertisers Index (rear)
2E	April, 1969	32

4. The following exhibit to my affidavit is a copy of the indicated page from Quick Frozen Foods International for the indicated month:

Exhibit Number	Month	Page
3A	April, 1969	98

Louisiana, had made an offer, just the week before, of selling deveining machinery to Pearl Island Seafood Company. Mr. Humbert explained to me the nature of the deveining machinery being offered. This machinery included the slitter and vein remover of the machinery known as "Deepsouth Model BV 4658 Shrimp Deveiner Machinery". Mr. Humbert showed me Barhanovich's written memorandum offer which read "complete delivery line F.O.B. N.O., delivery 60-90 days". Mr. Humbert also stated that Mr. Barhanovich, in Mr. Humbert's presence, called New Orleans collect and someone, who identified himself as Ray Skrmetta, made the same offer to Mr. Humbert over telephone. Mr. Humbert stated further that both Mr. Barhanovich and Mr. Skrmetta had assured Mr. Humbert that these machines involved no infringement of patents.

6. Again, on July 10, 1969, in the company of John Hale, I visited Pescadora S. A., Apartado 114, Panama, Republic of Panama. The plant manager, at that company's plant, advised me that about a week before our visit Mr. Barhanovich had offered to sell them deveiner machinery, as well as other shrimp processing machines. The plant manager told me that he explained to Mr. Barhanovich that they had no shrimp to process and that he was not, therefore, interested, at least at that time.

LeRoy E. Demarest

Sworn to and subscribed before me
this 21st day of November, 1969.

Notary Public

Seafood Nutrition

Fredrick J. Stare, MD, professor of nutrition, Harvard School of Public Health, at the seminar said that by the year 2000 the diet of the average American will contain more seafood.

Stare added that Americans would also be consuming less butter; but more milk, eating more food, but with less calories and drinking fluoridated water.

Improved nutrition was given as the basis for the prediction.

"There is substantial evidence that dietary changes can alter the level of fatty substances in the blood and help prevent heart attacks. The most important thing is to reduce the amount of saturated fat and provide more polyunsaturated fats," he said.

Fish consumed several times a week, Doctor Stare said, is helpful in lowering blood cholesterol because it has less fat than cuts of meat; ounce-for-ounce less calories and the fat it does have is less saturated than meat fat.

Doctor Stare pointed out fish is an excellent source of high quality protein and small fish eaten whole are good sources of calcium, phosphorous and fluoride.

"Thus, fish are at the top among those foods that provide the best in nutrition; along with meat, milk and eggs. Fish also has some definite nutritional advantages over these foods—less total fat, less saturated fat, more polyunsaturated fat, less cholesterol and a good source of numerous minerals," Stare said.

So-called "health foods" were hit by the nutritionist as a waste of money; saying a variety of fish, fruits; vegetables, meat and dairy products is needed for proper diet.

Enrichment of certain basic foods—iodine to salt, vitamin D to milk, vitamin A to margarine and key vitamins to flour are also beneficial, he said.

"Fish protein concentrate is something we will hear more about in coming years. It finally seems to have overcome the various legal and production hurdles that were in its way, but it still has a long way to go before it makes much of a contribution to world nutrition problems.

Seldom in discussions on fish protein concentrate is it mentioned that it is not a food, but rather an important constituent of nutrition, namely a protein concentrate with a generous supply of minerals from the fish bones. It can be fabricated into foods with acceptable flavors and smells so it will be consumed."

Increasing Scallop Sales

Methods of stimulating the sale of scallops were discussed by Howard W. Nickerson, executive director, Seafood Dealers Association of New Bedford, Massachusetts.

Nickerson told seminar delegates scallops in their natural uncooked state have little appeal to the consumer; public unlike fresh fruits, vegetables and quality meat products packaged in clear plastic containers.

"By customer intuition, quality fish and scallops are considered white in color. What can you do to stimulate anticipation of the later meal of golden brown scallops when all that is displayed is mounds of white scallops in their natural state?" he asked.

Answering his question, Nickerson said if the packaging is exciting, the housewife will pick it up and pay the price. If the package has done its job and the processor his, the housewife will be satisfied with her purchase and the fine meal that she has prepared.

We have not only gained a customer, but we have gained a friend, and this is what packaging is about, he said.

The speaker told the group per capita consumption has not increased as it should; nor have profits of the fishermen; adding that packaging must provide stimulation needed to change this situation.

"If I leave no other message today, I must leave this one . . . because of the lack of promotional funds and understanding of those in the seafood industry as to how important promotional advertising is, we who are concerned with packaging have got to make the difference if the American Seafood Industry is going to survive in today's market place".

Nickerson said that the housewife could trust her sense of smell and sight when purchasing fresh fish but buying frozen products she must trace the chain of distribution—processor, trucker, warehouse and distributor—to deliver the goods.

He added that today's consumer shops in a supermarket stocking more than 6,000 items packaged in glittering foil, fancy bottles, colorful cartons and cans and other wraps each vying for attention on the shelves.

"With this sort of competition, it behooves packers of fish and scallops to place proper importance on the package that protects and merchandises their product," he said.

Prime quality of frozen fish declines when temperatures in the frozen food case exceed zero degrees even for a short time. Retailers are permitted a tolerance of 10 degrees, but it is not unusual to see the temperature exceed that or packages stacked above the safety line, he said; making watertight durable packages a must for scallops.

"I'm no packaging expert, but I've been around fish and scallops all my life and I know that the package can make the difference in good fish and inferior fish reaching the customer," he added.

[END]

Simmetta Machinery Steps Up Sales, Development

Simmetta Machinery Corporation, New Orleans, manufacturer of a number of machines used in shrimp processing plants, has accelerated its activity, said President Ray Simmetta says further expansion is continuing.

Furthermore, the company continues to develop new equipment, the latest machine being a combination cleaner-separator, which will soon be marketed.

Simmetta's principal product is, of course, its shrimp peeling machine. Among recent installations are those at the plants of Sea Coast Company, Dejean Packing Company and Mayer Shrimp Company, all of Biloxi, Miss., Authement Packing Company of Dulac, La., Calvin J. Authement of Houma, La., and H. Morgan Daniel Seafoods of Port Lavaca, Texas.

Among installations of Simmetta de-veining machines are those in the Sea Coast, Mayer, Dejean and H. Morgan Daniel plants mentioned above, at Violet Packing Company in Violet, La., at Pesca, S.A. in San Salvador, and at Southern Shell Fish Company plants in Biloxi, in Harvey, La., and in Harlingen, Texas.

Simmetta cookers have been installed at the Mayer plant in Biloxi, at Gulf Coast Packing Company in Dulac, at the two Authement plants mentioned above and at the Cannery Division of Palacios Freezer, Inc. in Palacios, Texas.

SFA-FSA Joint Convention Plans Are Shaping Up

The combined Southeastern Fisheries Association-Florida Shrimp Association annual convention, slated for June 13-15 at the Manger Motor Inn, Tampa, is rapidly firming up its agenda. Herb Hill, Hill Refrigeration, has been appointed chairman of the Boat and Equipment Show which will be held in conjunction with the convention.

Frank Fernandez, Allied Insurance, is in charge of the golf tournament which will be held at 10 a.m., Friday, June 13 at the Quail Holloy Golf and Country Club. (It will be a lucky golfer who wins on Friday the 13th.) Prizes will be awarded to both men and women.

The Sea Coast Company licked its shrimp peeling problems with this SKRMETTA

SHRIMP PEELING MACHINE

Available as Model SKA or as Model SK-PDAA, which is same as SKA except for change parts to convert it for peeling pre-cooked shrimp.

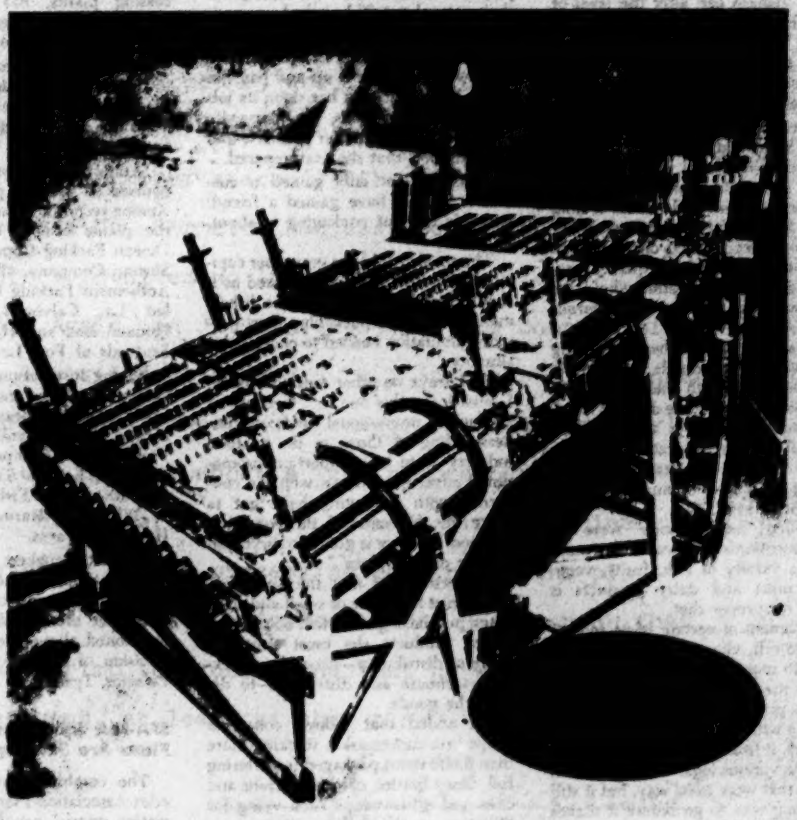
Skrmetta Automatic Shrimp Peeler Model 100-E.

Skrmetta Shrimp Peeler, Junior, Model 101-S

Skrmetta Automatic Shrimp Deveiner Machines.

Skrmetta Automatic Shrimp Blancher.

New machine, Combination Cleaner-Separater, available soon.



You can do the same.

Sea Coast Company, Inc. of Biloxi, Mississippi knows that Skrmetta has so much experience and know-how in the shrimp industry and shrimp machinery business that the Skrmetta name is synonymous with

PERFORMANCE - ECONOMY - DEPENDABILITY

Service and change parts are available for Skrmetta manufactured machines and other competitive machines.

For complete information, write or phone Ray Skrmetta

SKRMETTA MACHINERY CORPORATION

3536 LOWERLINE STREET NEW ORLEANS, LA. 70125 TEL. 504/488-4413

1B

The Sea Coast Company licked its shrimp peeling problems with this SKRMETTA

SHRIMP PEELING MACHINE

Available as Model SKA or as Model SK-PSAA, which is same as SKA except for change parts to convert it for peeling pre-cooked shrimp.

Skrmetta Automatic Shrimp Peeler Model 101-E.

Skrmetta Shrimp Peeler, Junior, Model 101-B.

Skrmetta Automatic Shrimp Deveiner Machines.

Skrmetta Automatic Shrimp Blancher.

New machine, Combination Cleaner-Separator, available soon.

NEW PRICE $20,000

You can do the same.

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3636 LOWERLINE STREET · NEW ORLEANS, LA. 70125 · TEL. 504/488-4413

IC

The Sea Coast Company licked its shrimp peeling problems with this SKRMETTA

SHRIMP PEELING MACHINE

Available as Model SKA or as Model SK-PCAA, which is same as SKA except for change parts to convert it for peeling pre-cooked shrimp.

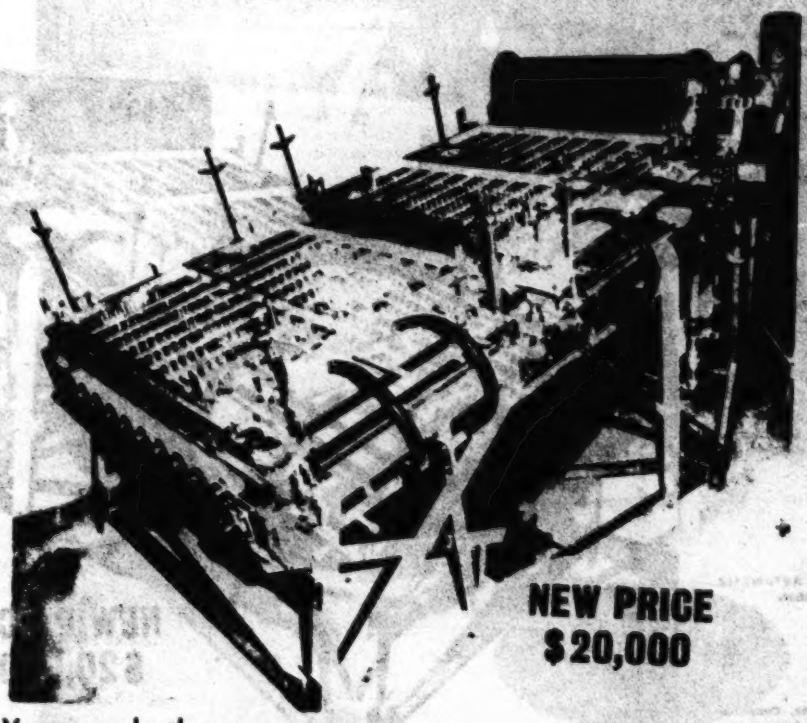
Skrmetta Automatic Shrimp Peeler Model 100-S.

Skrmetta Shrimp Peeler Junior, Model 101-S.

Skrmetta Automatic Shrimp Deveiner Machines.

Skrmetta Automatic Shrimp Blancher.

New Machine, Combination Cleaner - Separator, available soon.



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SKRMETTA MACHINERY CORPORATION

3536 LOWERLINE STREET NEW ORLEANS, LA. 70125 TEL: 504/488-4413

1D

Sincere Good Wishes for the New Year

- *To all our friends*
- *To our Producers and their fishermen*
- *To all Buyers and Users of BEE GEE Shrimp*

OUR SINCERE THANKS

John (Bee) de Nazaria, General Manager

B-G
SHRIMP SALES CO.
Phone: (813) 248-4965
P.O. Box 5565
TAMPA, FLORIDA

When You Say SKRMETTA ...You Say SHRIMPING

THERE IS NO DOUBT that the Skrmetta family has made many important contributions to the shrimping industry in the United States since the turn of the last Century. It has offered new ideas, innovative methods, and products ranging from shrimp peeling machines to a fully automatic deveining machine. It all began when Nicholas Skrmetta came to Biloxi, Mississippi in 1900 where he became the first Slovenian to work in the shrimp industry. After two years, he decided that he liked America and brought his family over from the old country to join him and build their lives together here.

Nicholas now had two shrimp boats of his own, but instead of following in the path of the rest of the shrimping industry, he began to put into practice new ideas for better production in the industry. It is said that he was the first to use power boats and trawls instead of sailing boats and seines that required manpower. Others soon began to follow him and also change over to the faster methods.

Nicholas Skrmetta fathered four boys and four girls, all of whom followed in his footsteps into the shrimp industry. Paul, his first son, pioneered many developments that are still in use today and started the family's interest in shrimp processing machinery. His work on the first shrimp peeling machine was in 1939.

Today the third and fourth generations of Skrmetta are still involved with the shrimp industry. Ray Skrmetta is President of Deepsouth Packing Company, Inc., in New Orleans, La., and is also associated with the Skrmetta Machinery Corporation. His sons, Ray, Jr., age 28, and Dennis age 31, both work with the Skrmetta Machinery Corporation.

The Skrmetta Machinery Corporation is in production on a number of machines used in the shrimp industry today. One of these is the Skrmetta Shrimp Peeling Machine Model 100-E that automatically peels shrimp. Other machines are a precooked shrimp peeling machine that can also be changed over to a machine for peeling raw shrimp, a combination cleaner and separator, an automatic shrimp blanching machine, and a fully automatic deveining machine.

Service and parts are offered for all Skrmetta Machinery Corporation equipment plus interchangeable parts for competitive machines.

The Skrmetta family will always be in the shrimping industry moving into the future with ever more modern machines and other equipment. The industry can look forward to the innovations of Ray, Jr. and Dennis Skrmetta.

SHRIMP 'N BOATS

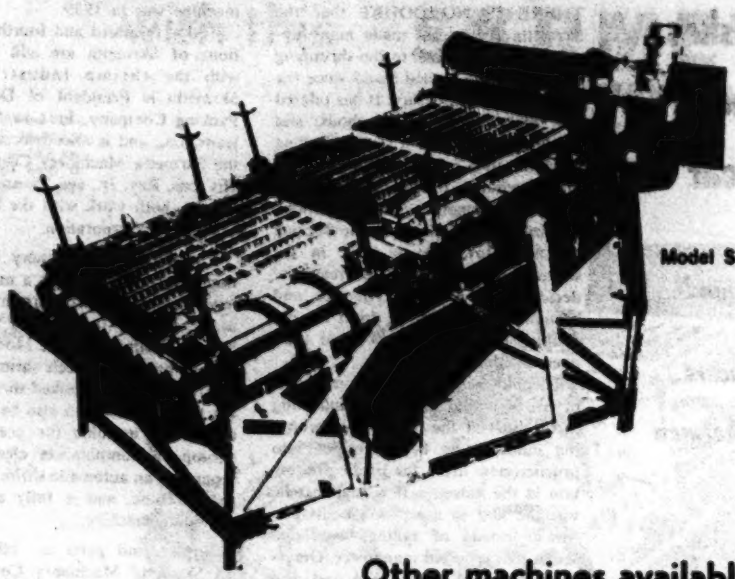
(From Page 57)

Bonifacidom, Ocean Springs, Miss., by Stewart & Stevenson Services, Houston, Texas, Detroit Diesel distributor. According to Joe Tocke, the first vessel on order is a 90-footer to be delivered in February; four 73-footers will follow. Under construction here in mid-November were two 52' steel oil supply boats being powered by Kennedy Marine Engine Co., Biloxi, Miss., Detroit Diesel distributor with 8V-71N main engines.

A 100-man training program for shrimp trawler riggers submitted by the Freeport (Texas) Shrimp Association is reported to have been approved by the regional office of the Manpower Administration, U.S. Dept. of Labor, Dallas, Texas. The program, to be started about mid-December, is an MA-4 JOBS Program, and will consist of two weeks of orientation, six weeks of job-related education, and 44 weeks of on-the-job training. The program is reported to have been funded by the government at $310,000.

1969 Texas shrimp boat licenses will be available for sale at the 12 coastal Texas Parks & Wildlife Dept. offices about August 1, 1969.

SKRMETTA
Shrimp Peeling Machines



Model SKA

Other machines available:

- Model SK-PCAA (same as SKA) except for change parts to convert it to other competitive models.
- Skrmetta Automatic Shrimp Peeler Model 100-E (improved version over the earlier model 100-D)
- Skrmetta Shrimp Peeler, Junior, Model 101-B.
- Skrmetta Automatic Shrimp Deveiner Machines.
- Skrmetta Automatic Shrimp Blancher.
- Other machinery used in shrimp processing plants.

Because of our long experience and know-how in the shrimp industry and the shrimp machinery business the SKRMETTA name has become synonymous with

PERFORMANCE—ECONOMY—DEPENDABILITY

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For complete information write or phone Ray Skrmetta

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SKRMETTA
Shrimp Peeling Machines

~~$39,000.00~~

Model SKA

~~$29,000.00~~

PRICE NOW

$20,000.00

Other machines available:

- Model SK-PCAA (same as SKA) except for change parts to convert it to peeling precooked shrimp.
- Skrmetta Shrimp Peeler Model 100-E.
- Skrmetta Shrimp Peeler, Junior, Model 101-E.
- Skrmetta Automatic Shrimp Deveiner.
- Skrmetta Automatic Shrimp Blancher.
- Other machinery used in shrimp processing plants.

Because of our long experience and know-how in the shrimp industry and the shrimp machinery business the SKRMETTA name has become synonymous with

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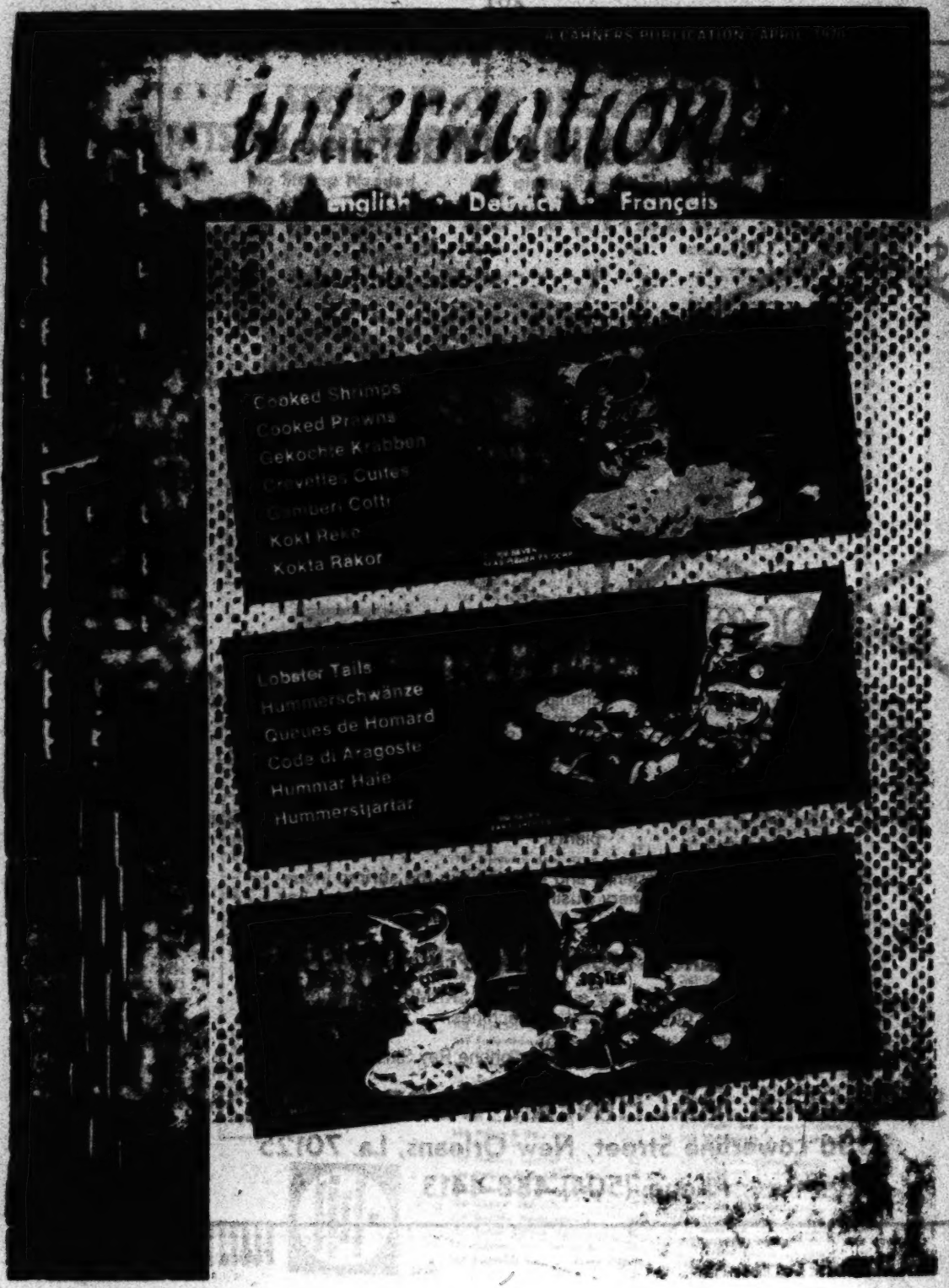
3536 Lowerline Street, New Orleans, La. 70125

Phone: (504) 488-4413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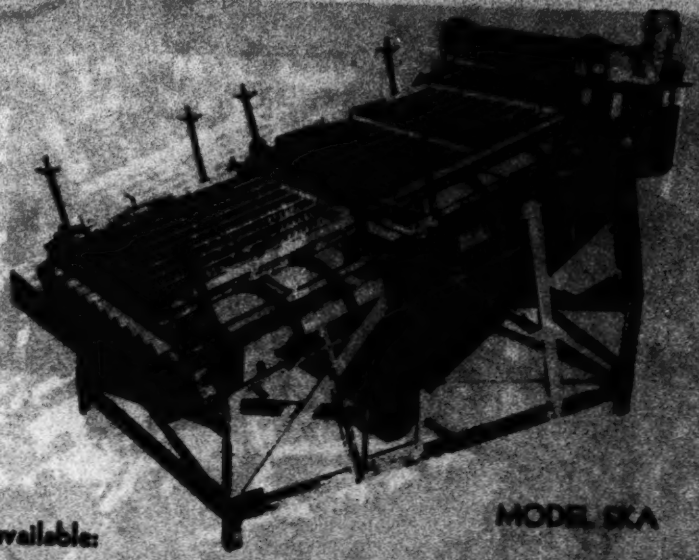
Camberi Cotti
Kokt Räka
Kokta Räkor
Lobster Tails
Hummerschwänze
Queues de Homard
Code di Aragoste
Hummar Hale
Hummerstjärtar

SKRMETTA
Shrimp Peeling Machines



MODEL SKA

Other machines available:

- Model SK-PCAA (same as SKA) except for change parts to convert for peeling precooked shrimp.
- Skrmetta Automatic Shrimp Cleaning Machine . . . available May 6th.
- Skrmetta Shrimp Peeler Model 100-S.
- Skrmetta Shrimp Peeler, Junior Model 101-S.
- Skrmetta Automatic Shrimp Deveiner, Model SV-470
  (available only for export in partially disassembled form and use in some foreign countries)
- Skrmetta Automatic Shrimp Blancher
- Skrmetta Combination Shrimp Cleaner and Separator
- Other machinery used in shrimp processing plants

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For complete information write or phone Jay Skrmetta

SKRMETTA MACHINERY CORPORATION

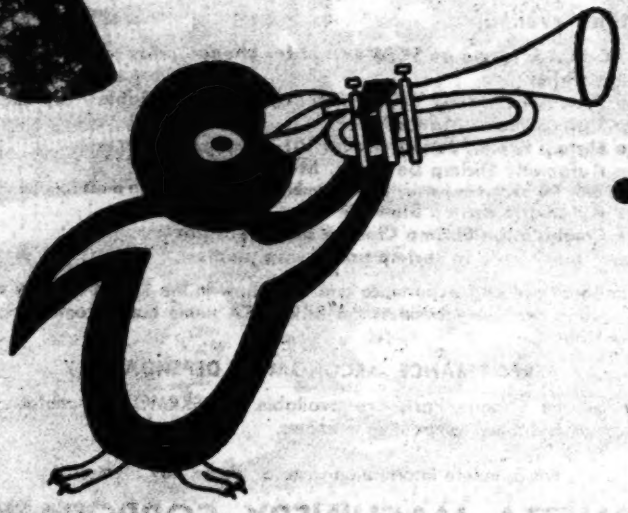
3536 Lowerline Street, New Orleans, La. 70125, USA

Phone (504) 486-4413

FISHBOAT

APRIL - 70
NFI
PREVIEW

Penguin (R)



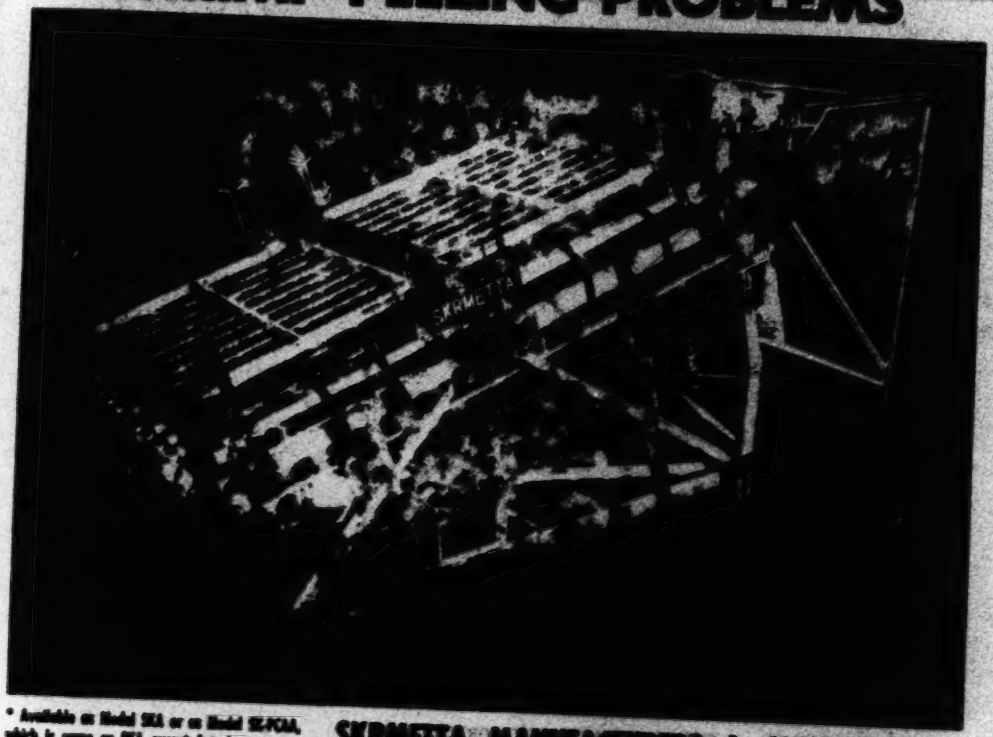
PENGUIN FROZEN FOODS, INC.

P. O. BOX 848 NORTHFIELD, ILL. 60093

PH. A/C 312-446-8530

3A

LOOK TO SKRMETTA FOR THE ANSWER TO ALL YOUR SHRIMP PEELING PROBLEMS



• Available as Model SEA or as Model SE-FCAL which is same as SEA except for change parts to convert it for peeling pre-cooked shrimp.
• Skrmetta Automatic Cleaner Model SE-C available May 4.
• Skrmetta Automatic Shrimp Peeler Model 100-E.
• Skrmetta Shrimp Peeler, Junior, Model 101-E.
• Skrmetta Automatic Shrimp Deveiner Model DV-470 available only for export to partially unassembled form and use in most foreign countries.
• Skrmetta Automatic Shrimp Blancher.
• Combination Cleaner-Separator for best results on Alaskan and Maine shrimp.

SKRMETTA MANUFACTURERS A COMPLETE LINE OF SHRIMP MACHINES.

SKRMETTA IS KNOWN FOR PERFORMANCE, ECONOMY AND DEPENDABILITY.

Service and change parts are available for Skrmetta manufactured machines and other competitive machines.

For complete information, write or phone Ray Skrmetta

SKRMETTA MACHINERY CORPORATION

3536 LOWERLINE STREET NEW ORLEANS, LA. 70125 TEL: 504/488-4413

ARTICLES OF INCORPORATION

OF

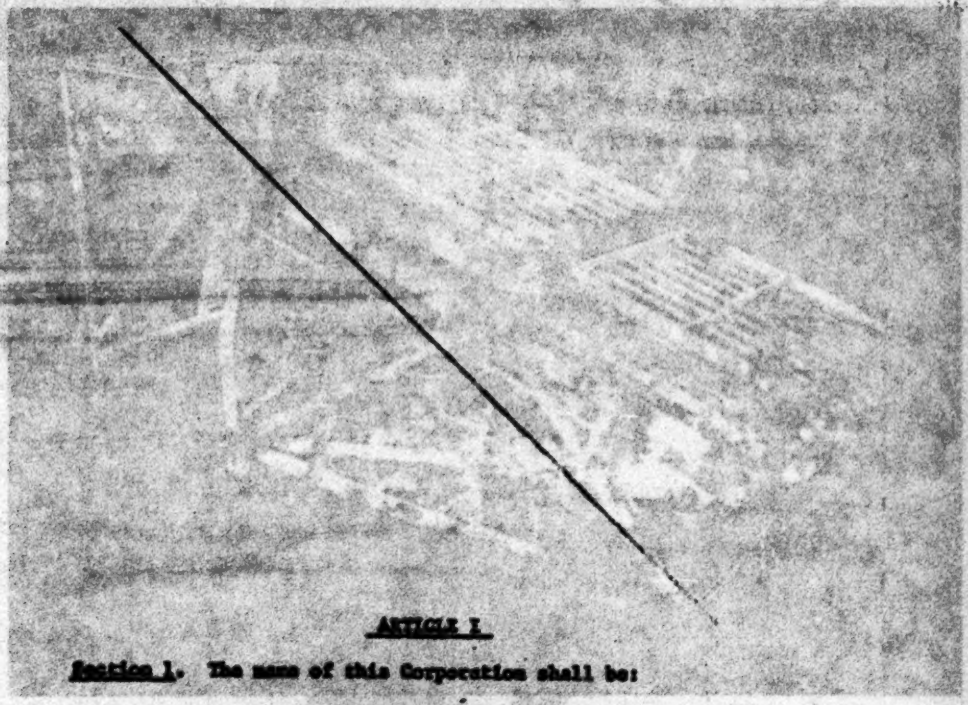
SKRETTA MACHINERY CORPORATION

United States of America,

State of Louisiana,

Parish of Orleans,

City of New Orleans,



ARTICLE I

Section 1. The name of this Corporation shall be:

SKRETTA MACHINERY CORPORATION

Section 2. The period of duration of this corporation shall be ninety-nine (99) years from the date hereof.

ARTICLE II

The objects and purposes for which this corporation is organized and the nature of the business to be carried on by it are stated and declared to be as follows, to-wit:

To perform labor, services and other necessary acts in the manufacture of shrimp peeling machines; to manufacture parts for use in servicing and repairing other shrimp peeling machines; to acquire the interest of others in other machinery; to develop new machinery for use in canneries, frozen, operations and in any other factories having need for machinery that can be built, serviced, parts furnished, and other maintenance as required.

ARTICLE III.

The location and post office address of the registered office of this corporation is 2538 LOUISLINE STREET, New Orleans, Louisiana.

ARTICLE IV

ARTICLE VII

All of the corporate powers of this corporation shall be vested in and the business and affairs of the corporation shall be managed by a Board of not less than three (3) directors, and not more than seven (7) directors, who need not be shareholders.

The Board of Directors shall have authority to make and alter by-laws, including the right to make or alter by-laws, fixing their own qualifications, classification or term of office, or fixing or increasing their compensation, time and places of meetings, and powers and duties, subject to the power of the shareholders to change or repeal the by-laws so made.

The number of the Board of Directors within the above limit shall be fixed by the shareholders at any general or special meeting thereof, or may be fixed by the written consent of the shareholders of all of the outstanding stock of this corporation without a meeting. Until the number be so fixed, the Board of Directors shall consist of three members. Except as specially provided and required to the contrary by the by-laws or by law, no notice of the holding of any meeting of either shareholders or directors shall state the objects or purposes thereof and the nature of the business to be transacted thereat.

The annual meeting of the shareholders for the election of directors shall be held at the registered office of the corporation and shall take place on the second Wednesday in March of eachyear at 3:00 o'clock P.M., beginning with the second Wednesday in March, 1969, unless or until otherwise provided by the by-laws.

Any director absent from a meeting may be represented by any other director or shareholder who may cast the vote of the absent director according to the written instructions, general or special, of said absent director filed with the Secretary at or prior to the meeting.

The below named directors shall serve until the first annual meeting of the shareholders of this corporation, or until their successors have been duly elected and qualified. Any vacancy occurring on the Board of Directors may be filled by the remaining members of said Board for the unexpired term at any meeting of the Board of Directors.

The Board shall elect a president, secretary and a treasurer, and may elect one or more vice-presidents. Any of the two above named offices may be combined in one person.

The following named persons shall constitute the first Board of Directors and shall be the officers of the corporation until the general election of directors is held at the annual meeting of the stockholders, or until their successors have been duly elected, qualified and installed, who, together with their post office addresses are as follows:

RAPHAEL Q. SCHETTA 3536 LOUISLINE ST., NEW ORLEANS, LA.
PRESIDENT-TREASURER

ALFREDA P. SCHETTA 3536 LOUISLINE ST., NEW ORLEANS, LA.
VICE-PRESIDENT

CECIL B. SCHETTA 3536 LOUISLINE ST., NEW ORLEANS, LA.
SECRETARY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION	)	
	)	
VERSUS	)	CIVIL ACTION
	)	
DEEPSOUTH PACKING CO., INC.	)	NO. 67-861

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

Louis B. Claverie — Attorney for Plaintiff

Guy W. Shoup — Attorney for Plaintiff

C. Emmett Pugh — Attorney for Defendant

(The above entitled and numbered matter came up for hearing on December 3, 1969, in the courtroom at 400 Royal Street, New Orleans, Louisiana, the HONORABLE ALVIN B. RUBIN, District Judge, presiding.)

THE COURT:

Whatever the injunction may provide, isn't it as binding on Mr. Skrmetta, who has knowledge of it, as if he were a party to the action? If he violates --

MR. CLAVERIE:

Well, we have been charged, if Your Honor pleases, with harassment throughout this litigation. We have preferred to seek this relief to seeking relief by way of contempt. We feel that if we can show that Mr. Skrmetta is the Deepsouth Packing Company and is Skrmetta Machinery Corporation, and if he is included under the injunction as Skrmetta Machinery Corporation is included under the injunction, it will respect the injunction and we will not be constrained to bring these proceedings for contempt.

MR. PUGH:

As set forth in Mr. Skrmetta's affidavit, Skrmetta's Machinery Corporation is not specifically and does not intend to manufacture, use or sell the devetners found as infringements in the prior litigation. There is no intention of forming Skrmetta Machinery Corporation to divert or side-step the injunction of the Court.

THE COURT:

Is there any doubt in your mind that Mr. Skrmetta personally as officer of Deepsouth and any corporation that he may later become associated with is bound by the injunction?

MR. PUGH:

No, I do not --

THE COURT: Because Rule 65(d) specifically includes that everyone who acts in active concert or participation with the defendant in the injunction or who has actual notice of the order by personal service or otherwise is bound by it just as if he were named.

MR. PUGH: We have no problem with that, Your Honor.

And also specifically on this latter part of adding new parties, unlike as Mr. Claverie says, Mr. Skrmetta is not the alter ego of Skrmetta Machinery. It is not totally owned by Mr. Skrmetta, there is at least a 25% interest owned by another party.

THE COURT: That's completely immaterial.

As I view it, if Mr. Skrmetta is an officer or associated with Skrmetta Machinery, they have notice of the injunction, and I will, unless something is cited me that would make it otherwise, treat them as bound by it just as much as Deepsouth.

MR. PUGH: We are not arguing that point, Your Honor.

THE COURT: I just want to make what the Court's attitude is clear.

MR. PUGH:

The other issue I would like to direct myself to is the advertising activities pointed out by plaintiff. If you look at the advertisements which they cited, the only mention of deveining is one on the margin of the advertisements or in the body it just refers to Skrmetta automatic shrimp deveining.

THE COURT:

Why is that now before me, the text of the advertisement, and what is indicated by it?

MR. PUGH:

They have requested Your Honor to add in the activities enjoining advertising activities and they have attached various advertisements as apparently something requiring the addition of these acts, presumably if you add these acts, Skrmetta Machinery Corporation will be enjoined from ever mentioning shrimp deveining machines in a commercial context. I don't think that should be allowed.

THE COURT:

Here whether Mr. Skrmetta intends to sell blades or not, or sell machines with blades or not, we are going beyond what's before me. All that is before me is whether the order should be modified as to Deep-south or anyone who has knowledge of the injunction from advertising or offering for sale or pro-

moting or soliciting orders or making, using or selling any apparatus in Claim 3 of 218.

MR. FUGE:

We find two problems with that.

Your Honor, if -- I believe there may be a presumption created which I don't think should exist, that is if you do enlarge the injunction to include the acts they have requested and were done only because a showing of these various acts, there may be a presumption, should Skrmetta Machinery put forth the same ad again, he is involved in a contempt. We certainly want to avoid any presumption. We don't want to allow the plaintiff to file contempt and further case harassment to the defendant because of the fact you added these acts, and the only facts shown for it to substantiate the addition have been the ads which I think have been quite proper and should be allowed in the future because it does not constitute an advertisement of the rocking slitter or the fingernail belt discharge conveyor.

Moreover, we feel that the devices, even the rocking slitter and discharge conveyor with fingernail belt can be made and sold in some foreign countries, and that to allow again this addition of these

act would create perhaps a presumption that he is not allowed to advertise anywhere and the articles of the magazines we -- they have cited do have substantial foreign distribution.

Another point that should be brought out is, there is no necessity of adding these acts because if indeed Skrmetta personally or Skrmetta Machinery Corporation or Deepsouth Packing advertised for sale any of the infringing devices in the United States, that is infringement within the United States, then they could be enjoined under the present injunction or cited for contempt under the present injunction. Just a mere threat to utilize a patent matter constitutes grounds for contempt. This constitutes selling, there being no need for any change in the parties. The problems in these presumptions being raised all belie plaintiff, the addition of these acts to the present injunction, no necessity for it, they are fully covered at the present time.

THE COURT:

What date were the parties notified of the Court's decision? I was looking through my file for that, I am not talking about the date of the injunction.

MR. FUNK:

The date of the findings of fact

MR. CLAVERIE: April 7, 1969.

MR. FUGE:

I don't have those facts before me, Your Honor.

MR. CLAVERIE:

That's the decision, is that what Your Honor referred to?

THE COURT:

Yes.

MR. CLAVERIE:

Yes.

THE COURT:

It seems to me a sufficient showing has been made to justify the amendment of the injunction in the regards prayed for in paragraph one of the motion. The language being as specifically proposed in paragraphs 1(a) and 1(c), that is the portion that is proposed to modify 1(a) and 1(c). Of course, by saying that, I do not intend to rule nor do I intend that leave granted the plaintiff to submit an amended injunctive order to create any inference that the defendant's conduct to date has been or alternatively has not been a violation of the injunction previously issued or the injunction as thus modified.

I do feel from the correspondence in the case, there may

be some misunderstanding as to the scope of the injunction with respect to advertising. This is a matter the Court feels clearly ought to be included and I will grant leave to amend as set forth in Paragraph 1 of the motion.

I am going to deny leave to add additional parties as set forth in Paragraph 2 of the motion first because I have some doubt whether I have the right at this time to make other parties explicitly joined in these proceedings in effect without some evidence of their unity of interest or other, some evidence of other propriety of joining them at this time and also the fact that Rule 65(d) of the Federal Rules of Civil Procedure as interpreted by the Court seems adequately to take care of any problems that may be created by the interposition of fictitious entities or new entities if not fictitious to justify a violation of the injunction.

MR. PUGH:

Your Honor, could I also have your comments on the record as to the inference of the existence or non-existence and presumption relative to the foreign activities?

THE COURT:

That matter is not now before me and my comment on the record is sufficient unto the day as the evil

thereof which is both.

MR. PUGH:

Your Honor, I don't know if this is proper, but I put forth the question in light of the addition of the language to the present injunction; is there any inference that Mr. Skrmetta cannot continue to utilize the eds as shown in the affidavit?

THE COURT:

I am not creating any inference one way or the other. I would suggest that Mr. Skrmetta would do well to be guided by the advice of counsel.

MR. PUGH:

Thank you, Your Honor.

CIVIL DOCKET

UNITED STATES DISTRICT COURT — Section C — Jury demand date:

67-861

D. C. Form No. 101A Rev.

TITLE OF CASE	ATTORNEYS
THE LAITRAM CORPORATION versus DEEPSOUTH PACKING CO., INC.	For plaintiff: Louis D. Cleveria Phelps, Dunbar, Marks, Cleveria & Sims 420 Hibernia Bank Bldg. of Counsel: A. Robt. Thibault of Wilkinson, Mawhinney & Thibault Munsey Bldg., Washington D.C. 20004 Guy M. Shoup of Keith, Johnston & Isner 250 Park Avenue New York, N.Y. 10017 Hugh E. Carter of Jennings, Carter & Thompson 1414 Bank for Savings Bldg. Birmingham, Alabama 35203 For defendant: Paul L. O'Brien of Hanson, Cobb, O'Brien & Tucker 888 17th St., NW Washington, D.C. 20006 Lake & Pugh C. Emmett Pugh 616 Capitol St. 70130

C. EMMETT PUGH
Attorney-At-Law

RECEIVED
DEC 5 1969

BY:

WEDNESDAY, DECEMBER 3, 1969

12. 10:00 AM

MOTION OF LAITRAM CORP. TO MODIFY WRIT OF INJUNCTION

Argument

GRANTED as to paragraph 1

DENIED as to paragraph 2

Counsel for Plaintiff to submit proposed amended injunctive order

DEC 3 1969

C. EMMETT PUGH
DEC 1969

FILED
DEC 3 U 14 PM '69
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

THE LAITRAM CORPORATION, : CIVIL ACTION
Plaintiff, :
versus : NO. 67-861
DEEPSOUTH PACKING CO., INC., :
Defendant. : SECTION "A"

ORDER

The Motion of the plaintiff, The Laitram Corporation, to modify Clauses (a) and (c) of the Writ of Injunction entered by this Court in these proceedings on June 30, 1969 is granted and accordingly it is ordered that the Clauses (a) and (c) of the Writ of Injunction of June 30, 1969 be and the same are hereby amended so that said clauses shall hereinforth read as follows:

"(a) Advertising, offering for sale, promoting or soliciting orders for, making, using or selling any apparatus which infringes Claim 3 of United States Letters Patent No. 2,694,218,"

* * *

"(c) Advertising, offering for sale, promoting or soliciting orders for, making, using or selling any apparatus which infringes Claim 1 of United States Letters Patent No. 2,825,927,".

The Motion of the plaintiff, The Laitram Corporation, to modify the aforesaid Writ of Injunction dated June 30, 1969 so as to add Skrmetta Machinery Corporation and Raphael J. Skrmetta as additional persons to whom said Injunction is addressed and as persons expressly named in said Injunction is denied.

Dated at New Orleans, Louisiana, this 2nd day of December, 1969.

DEC 4 1969

JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION,	)	CIVIL ACTION
Plaintiff,	)	NO. 67-861
versus	)	SECTION "C"
DEEPSOUTH PACKING CO., INC.	)	
Defendant.	)	

DEFENDANT'S MOTION TO MODIFY WRIT OF INJUNCTION

Deepsouth Packing Co., Inc., defendant, hereby moves this Court for an order modifying the writ of injunction signed and issued in these proceedings on June 30, 1969, and amended December 3, 1969, and particularly clauses (a) and (c) thereof, so that said clauses shall read as follows:

(a) Advertising, offering for sale, promoting or soliciting orders for, making, using or selling any apparatus which infringes Claim 3 of United States Letters Patent No. 2,694,218; the following acts are not included hereunder:

(1) the making and/or selling of Deepsouth Packing Co., Inc.'s Model BV 465 S shrimp deveining machinery in "kit form", that is, with the blades and water supply header not assembled on or attached to the rocking table slitter trough portion of the machinery, with final assembly, testing and use of the machinery to be only performed outside of the territorial United States;

(2) the making and selling of a modified Deepsouth Packing Co., Inc.'s Model BV 565 S shrimp deveining machinery, wherein the rocking table slitter trough portion of the machinery does not include any blades (or their equivalent), the blades therefor to be secured from a source independent of Deepsouth Packing Co., Inc. such as a general supplier of such blades, and the final assembly, testing and use of the machinery to be only performed outside of the territorial United States; or

(3) advertising in the United States by Deepsouth Packing Co., Inc. of shrimp deveining machinery in general terms wherein the caveat "Some models not available in the United States" is included, such as that attached hereto as Exhibit A.

(c) Advertising, offering for sale, promoting or soliciting orders for, making, using or selling any apparatus which infringes Claim 1 of the United States Letters Patent No. 3,285,227; the following acts are not included hereunder:

(1) the making and/or selling of Deepsouth Packing Co., Inc.'s Model BV 465 S shrimp deveining machinery in "kit form", that is, with the "fingernail" belt not placed in or attached to the discharge conveyor portion of the machinery with final assembly, testing and use of the machinery to be only performed outside of the territorial United States;

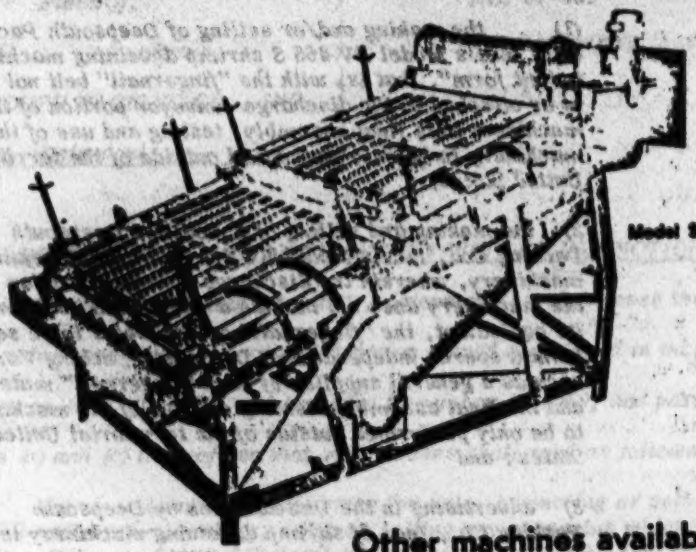
2) the making and selling of a modified Deepsouth Packing Co., Inc.'s Model BV 465 S shrimp deveining machinery, wherein the discharge conveyor portion of the machinery does not include a "fingernail" belt or its equivalent, the "fingernail" belt thereof to be secured from a source independent of Deepsouth Packing Co., Inc. such as a general supplier of such "fingernail" material, and the final assembly, testing and use of the machinery to be only performed outside of the territorial United States; and

3) advertising in the United States by Deepsouth Packing Co., Inc. of shrimp deveining machinery in general terms wherein the caveat "Some models not available in the United States" is included, such as that attached hereto as Exhibit A.

The instant motion is directed to clarifying the propriety of certain activities which have been questioned by plaintiff in its previous "Motion to Modify Writ of Injunction" and in discussions between counsel and this Court attendant thereto.

EXHIBIT A

SKRMETTA
Shrimp Peeling Machines



Model SKA

Other machines available:

- Model SK-PCAA (same as SKA) except for change parts to convert it to other competitive models.
- Skrmetta Automatic Shrimp Peeler Model 100-E (improved version over the earlier model 100-D).
- Skrmetta Shrimp Peeler, Junior, Model 101-B.
- Skrmetta Automatic Shrimp Deveiner Machines. *
- Skrmetta Automatic Shrimp Blancher.
- Other machinery used in shrimp processing plants.

Because of our long experience and know-how in the shrimp industry and the shrimp machinery business the SKRMETTA name has become synonymous with

PERFORMANCE—ECONOMY—DEPENDABILITY

Service and Change Parts are available for SKRMETTA manufac- [illegible]

Some models not available in the United States.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION, Plaintiff versus DEEPSOUTH PACKING CO., INC., Defendant.	CIVIL ACTION No. 67-861 SECTION "C"

AFFIDAVIT OF RAPHAEL Q. SERRETTA RELATING TO DEFENDANT'S MOTION TO MODIFY WRIT OF INJUNCTION

State of Louisiana

Parish of Orleans

Before me, the undersigned authority, personally came and appeared RAPHAEL Q. SERRETTA, who, having been by me first duly sworn, did depose and say that:

1. He is President of Deepsouth Packing Company, Inc., the defendant in Civil Action No. 67-861 of the docket of the United States District Court for the Eastern District of Louisiana, New Orleans, Division.

2. He has received an order for Deepsouth Packing co., Inc.'s Model BV 465 S shrimp deveining machine in unassembled "kit form" from a foreign customer for use in a foreign country.

3. He has been advised by legal counsel that it is within his legal rights to manufacture and sell a Model BV 465 S shrimp deveining machine in its unassembled parts, in particular never combining the blades, trough and water header together or never combining the "fingerwell" type bell with its discharge conveyor structure, if all use and assembly of the parts is to occur outside of the territorial United States.

4. He intends to fill said foreign order in the manner approved

by legal counsel unless he is advised or ordered to the contrary.

5. Substantial interest from several other foreign countries has been shown in the purchase of Deepsouth Packing Co., Inc. Model BV 465 S shrimp deveiner machines in their unassembled parts as described in Paragraph 3 hereof for use in those foreign countries.

6. He intends to fill any additional such foreign orders in the manner approved by legal counsel unless he is advised or ordered to the contrary.

Raphael Q. Shrmella

Sworn to and subscribed before me, this day of February, 1970.

Notary Public in and for the Parish of Orleans, State of Louisiana

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION — CIVIL ACTION

VS — NO. 67-861

DEEPSOUTH PACKING CO., INC. — SECTION "C"

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

Messrs. Phelps, Dunbar, Marks, Claverie & Sims
By: Louis B. Claverie, Esq.

Messrs. Keith, Johnston & Isner
By: Guy W. Shoup, Esq.

Attorneys for Plaintiff

C. Emmett Pugh, Esq.

Attorney for Defendant

(The above entitled and numbered cause came up for hearing on February 25, 1970, in the courtroom at 400 Royal Street, New Orleans, Louisiana, the HONORABLE ALVIN B. RUBIN, District Judge, presiding.)

P R O C E E D I N G S

MORNING SESSION

FEBRUARY 25, 1970

THE COURT:

Call the next case, please.

THE CLERK:

Civil Action No. 67-861, the Laitram Corporation versus Deepsouth Packing Company Corporation.

MR. PUGH:

Emmett Pugh, counsel for Deepsouth Packing Company, defendant in this cause.

The key issue pr vided in the motion is the propriety of providing elements of a patented combination in disassembled form, the final assembly or any assembly or use of that combination being outside of the United States.

THE COURT:

You filed an affidavit which I have been looking for, I don't see it, stating what it is proposed to do, and I didn't understand from the affidavit precisely what it is proposed to be done. Would you tell me exactly what it is proposed to sell and in what fashion, what

the kit consists of, and what, if anything, is not included in the kit that would be necessary to the final operation of the machine?

MR. PUGH:

Basically what is being provided is the elements of the combination all in disassembled form, never --

THE COURT:

Don't tell me that language, that's what you told me in the brief, tell me precisely what the kit will include, what, if anything, in the model, the working one, I saw, is not included.

MR. PUGH:

Would you like a copy of the affidavit?

THE COURT:

I don't want the legal conclusions. Yes, I would like to see the affidavit. I know you filed it and I read it and I am sure it is one of these papers before me, but --

(Document to the Court.)

MR. PUGH:

The basic elements involved in, for example, the slitter portion of defendant's deveiner involve a trough, the blades, the support structure and the water-supply means.

THE COURT:

And a motor, perhaps?

MR. PUGH:

Yes.

THE COURT:

And a rocking arm?

MR. PUGH:

That's correct. This is all what I consider part of the support structure.

THE COURT:

Yes.

MR. PUGH:

Now, these will be provided in separate crates. They will be as in previous cases or in previous situations, the blades will have been secured from the manufacturer of the blades, they will be packaged separately, the trough will be packaged separately and the support structure and the water supply structures will be packaged separately and none of these elements will ever be assembled and they will be made on the same -- in the same shipment but packaged separately.

THE COURT:

Now, you suggested at some time during the course of this that the blades would not be included but would be shipped -- separately obtained by the foreign buyer.

MR. PUGH:

Right.

THE COURT:

I understand it's now proposed these will be shipped as part of the --

MR. PUGH:

In the original motion, there were two steps or sets or two situations presented: One, all the elements would be provided in disassembly. The second situation, the blades and fingernail belt would be secured separately or independently from Deepsouth Packing Company, namely from the manufacturer of the blades, where Deepsouth secures its own blades, and the material for the fingernail belt would be obtained from a source separate from defendant. So there were two situations presented, the one because of the time element, one that's presently being pursued is that outlined, I believe it's in subsection "A", that is where all of the elements, separate elements, were being provided by the defendant or by Mr. Skrmetta.

THE COURT:

All right.

Now, secondly, will this ever be assembled before shipment for testing purposes or to determine whether all of the parts are there or whether they operate?

MR. PUGH:

No, it will not.

As a matter of fact, not even sub-assemblies, this is the point in the [illegible] case, some of the sub-assemblies, that is the elements themselves, were combined and tested, not even that will be done by defendants.

THE COURT:

Third, who will actually assemble it when it gets to whatever foreign country it goes to?

MR. PUGH:

The customer will be primarily liable, assistance has been offered to the customer. If need be, defendant's presence will be provided there to assist in final assembly. This is the same situation as Hewitt Robins whereby it provided all drawings and sketches and personnel was sent to Turkey to assist in final assembly. Again that assembly does not occur except in the foreign country.

THE COURT:

What foreign country is this contemplated to take place in?

MR. PUGH:

This particular one, Brazil.

THE COURT:

Is there any contemplation of a restriction to prevent importation of that machine from Brazil to the United States or the export, I suppose, from Brazil to the

United States?

MR. PUGH:

There is no contemplation of such an act occurring. We could certainly cure such a thing. The machine is being purchased for final use in that foreign country.

THE COURT:

Okay. I think I understand your position.

Anything further you would like to say about it?

I will be glad to hear it.

MR. SHOUP:

Your Honor, Guy Shoup for Laitram.

Mr. Pugh has also moved with respect to the tumbler, and during the interchange between Your Honor and Mr. Pugh relating to the slitter, it appears that you asked questions which established the means by which Deepsouth intends to or would handle the slitter, and the matter of the tumbler is still very unclear on the record.

THE COURT:

I take it, Mr. Pugh is also saying on the record the tumbler will be shipped, although in separate components, and the purchaser will not have to buy anything separate; is that right?

MR. PUGH:

We don't have a tumbler.

We do have a discharge with fingernail belt. It was contemplated by defendant that that portion would be shipped with a mesh wire belt, although that mesh wire belt hasn't come in, it might be shipped without any mesh belt and any fingernail belt will be packaged separately and independently.

MR. SHOUP:

First of all, Mr. Pugh has skipped over one word in the

MR. SHOUP:

I respectfully disagree that the proposed conduct is not in accord with the patent laws. What's happening is that the consideration for these special parts, and in each of these three other cases they are parts which were apparently generally used for other machines, and each of these three other cases there were parts like salt tablets or something like that that were not specially designed, and the consideration is coming directly to Mr. Skrmetta supposedly or one of hus business entities and when a sale takes place he reaps his profit within the confines of our economy which is, I think, is exactly what the patent laws are designed to prevent.

Further, I'm a little bit puzzled by defendant's reply memorandum because he says that the delay in bringing this motion until January, 1970, was due to defendant's waiting until an actual order for an unassembled de-

veiner was placed by a foreign customer, so there could be no question as to an actual controversy, within the last week I have received from Brazil a copy of a pro forma invoice of the Skrmetta Machinery Corporation dated October 30, 1969, calling for one Skrmetta shrimp deveiner as well as a copy of an import license which talks in terms of a complete automatic deveiner machine and doesn't say anything about parts at all, doesn't say anything about the things being put in boxes, this is granted on the 10th of December and I just received this within the last week. So I don't -- procedurally I think the facts are very, very much at odds with what the reality of this transaction is.

And, secondly, if Your Honor is so disposed to look at those cases, I respectfully state that they are wrong with respect to this matter.

MR. SHOUP:

Would it be possible in order to -- in order to precisely establish the facts upon which Your Honor intends to rule, for us perhaps to take the deposition of Mr. Skrmetta limited to this one specific transaction.

THE COURT:

I take it that statements of counsel are part of the record.

I am going to act on them as part of the record.

I have no objection to providing any evidence you want provided it's done expeditiously.

MR. SHOUP:

We are going to do it today, if necessary.

THE COURT:

That's a matter to be arranged between you and opposing counsel.

I have, I believe, the right under the rules to interrogate counsel on a matter of this nature and act on the basis of his representations.

MR. SHOUP:

The motion talks about an order to Deepsouth, and these documents are an invoice on the heading of the Skrmetta Machinery Corporation.

THE COURT:

I will be glad for you to file whatever you wish in the record so, as I say, provided it's done expeditiously, but the matter has been pending now long enough, I ought to have all the facts before me.

MR. SHOUP:

How much time would Your Honor grant me?

THE COURT:

I am not granting you any time.

Get it in the record, if, before I act on it, I have it,

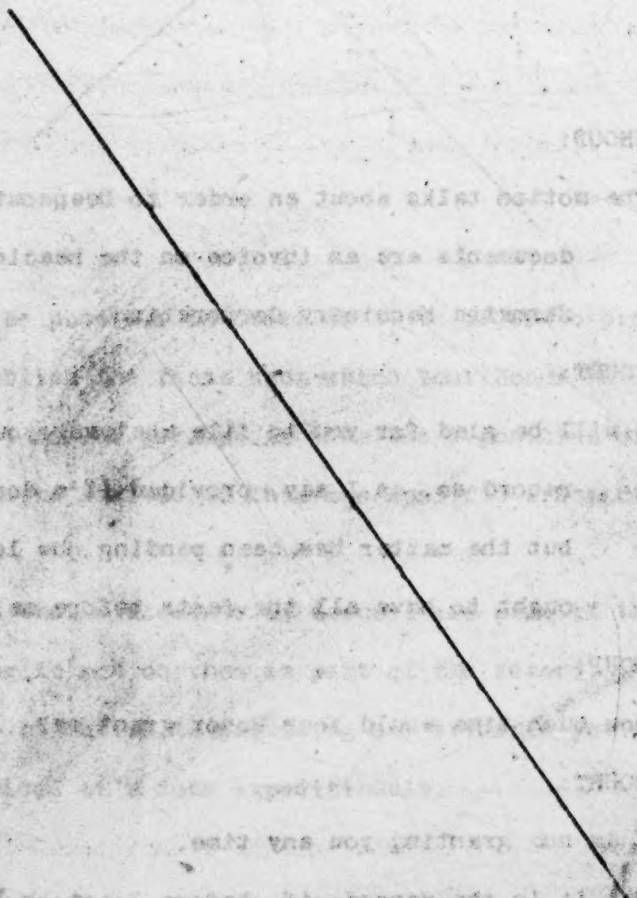
I will act on it. It seems to me whatever the ruling may be, this has been pending for several months and I just don't think I ought to extend any further time. If you act promptly, --

MR. SHOUP:

The end of this week perhaps?

THE COURT:

I have nothing more to add, Mr. Shoup, than what I already have.



acted upon.

THE COURT:

What is this invoice that I have been presented with, this is not being acted on?

MR. PUGH:

No, it's not.

The invoice that is being acted on was issued, I believe, in January of 1970 and has to do with -- with the providing of a Deepsouth deveiner, not a Deepsouth but the same model that was involved in the litigation by Skrmetta Machinery Company in kit form, that is with the disassembled elements involved, and that is the invoice that is being acted upon. The letter of credit that was established by the customer occurred subsequent to this date and again was involved with the kit form version of the model V-470 deveiner.

THE COURT:

What I don't understand, Mr. Pugh, is whether this transaction is entirely behind us and what we have is a brand new transaction or whether this transaction is recast in a different form to make it more palletable? Tell me what it is?

MR. PUGH:

These certainly led up to the final conclusion, it was always contemplated that the device insofar as after

your decision was concerned, it was always contemplated that this would be provided in broken down disassembled parts.

Now, Mr. Skrmetta did not receive the advice of counsel on the wording of his prior invoices, but he did on the subsequent ones. It was always contemplated Mr. Skrmetta had received council from his attorneys as to the propriety of providing it in disassembled form and it was always his intention to so provide it to his foreign customers even though his invoices, this particular one, was not couched in these terms.

THE COURT:

It seems to me you are saying two different things: He always had this intention but didn't receive advice from counsel that resulted in that form until later.

MR. PUGH:

No, always had the intention, the precise wording was not -- in other words, he acted in his regular business manner and provided an invoice in the same form as to what he had even though the manner of shipment and delivery was different.

THE COURT:

What is the purpose -- where is the document being acted on?

MR. PUGH:

Well, he has them at his office. I believe I have a copy at my office, I can provide --

THE COURT:

If this is another one that is being acted on, and I do think then I will permit the plaintiffs to examine that document and interrogate about it, I think they ought to know what it's about, and I ought to know what it's about.

MR. PUGH:

If I might interject, Mr. Skrmetta informs me that the change basically --

THE COURT:

I don't want any basics. I want to see the actual document and the other side to see it and know what it's about.

MR. PUGH:

Mr. Skrmetta is available in the court if you have any specific questions to direct to him.

THE COURT:

No, I think the other one is to be produced and Mr. Skrmetta is to be produced and his deposition can be taken today and I will consider it on the record.

MR. SHOUP:

One second, is there a second import license also?

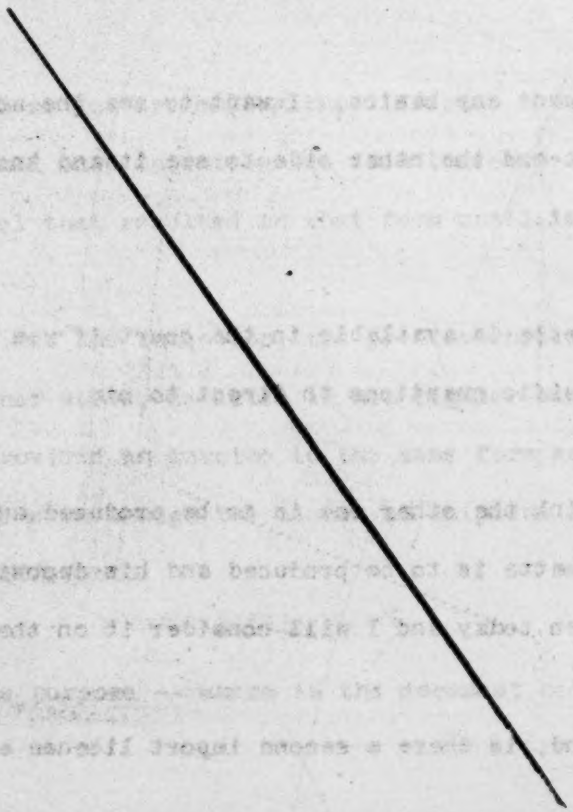
MR. PUGH:

I don't know that information.

THE COURT:

You can inquire into that when you interrogate Mr. Skrmetta on his deposition.

I will order all documents connected with this transaction, all correspondence leading up to it, all advertisements whether in English or -- in other words, all documents from the first time to the present be produced and have Mr. Skrmetta there to examine him and you can file the documents and I will act on it in the light of whatever the patent law may say.



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

THE LAITRAM CORPORATION

versus C.A. 67-861

DEEPSOUTH PACKING COMPANY, INC.

TESTIMONY OF R. O. SKRMETTA, taken by Plaintiff at 1300 Hibernia Bank Building, commencing at 11:45 o'clock a.m. on Wednesday, February 25, 1970.

Dietrich & Pickett, Inc.
Stenotypists
333 ST. CHARLES AVENUE, SUITE 1221
NEW ORLEANS, LOUISIANA 70130 - 822-3111

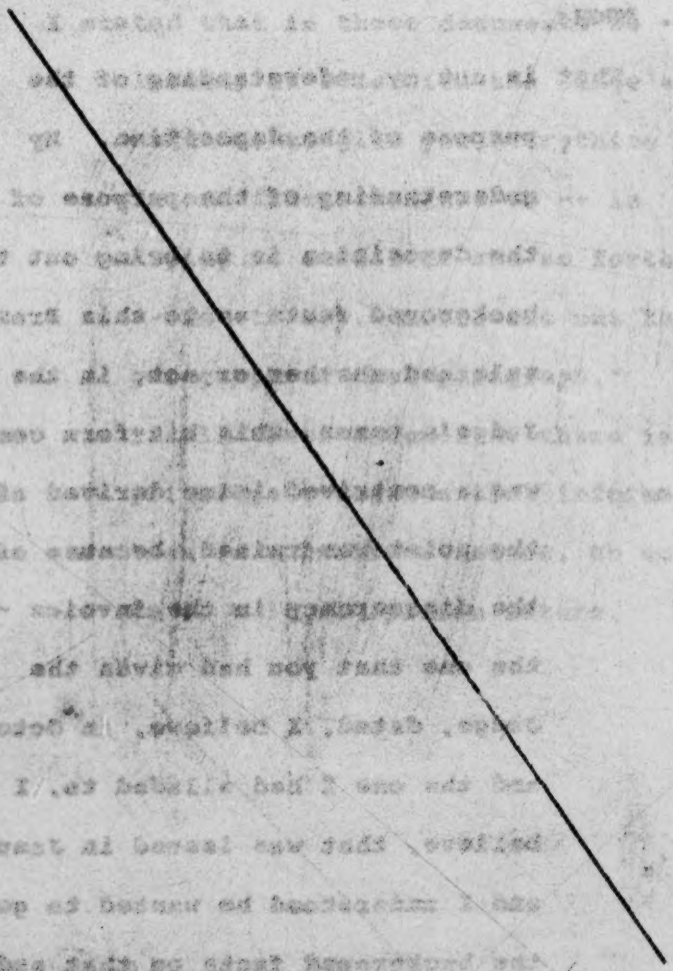
MR. PUGH:

I stated that in these documents we intend, in line with the Judge's request, to give you everything in our files, and not to -- in trying to save time and so forth -- not to say, "Let's cut out this paragraph or that paragraph." In all these documents, there is privileged, confidential information of a business nature, as well as of a legal opinion nature.

MR. PUCH:

That is not my understanding of the purpose of the deposition. My understanding of the purpose of the deposition is to bring out the background facts as to this Brazil sale and whether or not, in the Judge's terms, this kit-form concept was a contrived issue derived after the point was raised, because of the discrepancy in the invoice -- the one that you had given the Judge, dated, I believe, in October, and the one I had alluded to, I believe, that was issued in January, and I understood he wanted to get the background facts on that and all

documentation having to do with that, so that he could see whether or not it was a contrived issue, although I am not sure this is even relevant, but he wanted that information in his hands, and that is the information we are providing for him.



BY MR. SHOUP:

Q Let's see, Mr. Skrmetta, you gave your name and address to the Reporter. I take it you are still President of Deepsouth Packing Company?

A Yes, sir.

Q And also President of Skrmetta Machinery Corporation?

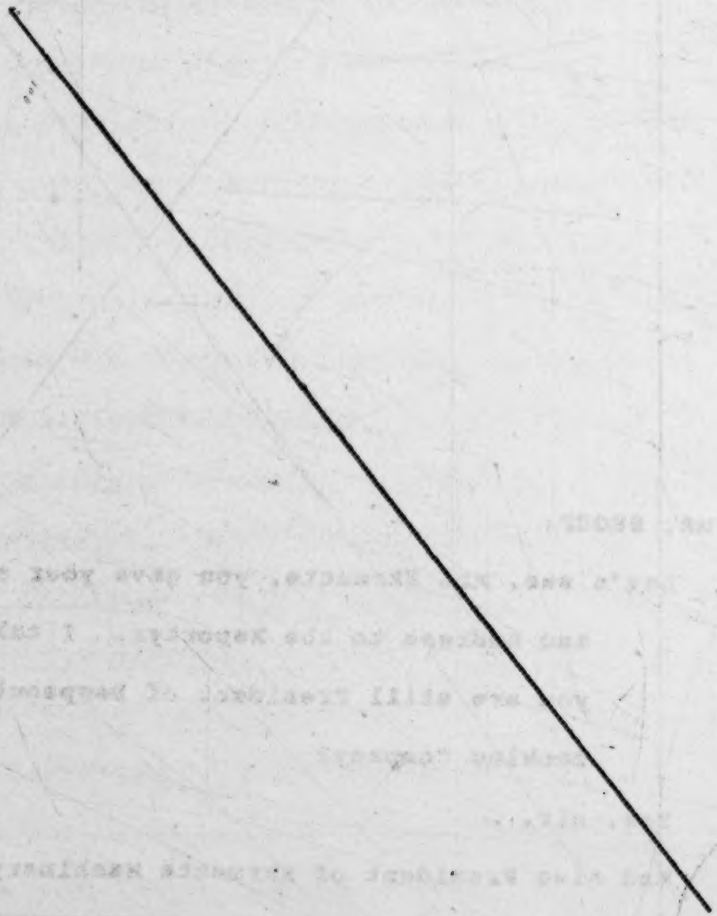
A Yes, sir.

Q And who are the other officers of the Deepsouth Packing Company at the present time?

A My wife is Vice-President, and my brother is Secretary.

Q And who are the other officers of the Skrmetta Machinery Corporation?

A The same.



BY MR. SHOUP:

Q How much stock in the Deepsouth Packing Company is in your name?

A Okay. I think ninety -- this isn't -- 90 percent or better than ninety; I don't know.

Q And what would the figure be with respect to the Skrmetta Machinery Corporation?

A Possibly seventy-four or less.

Q But more than 50 percent?

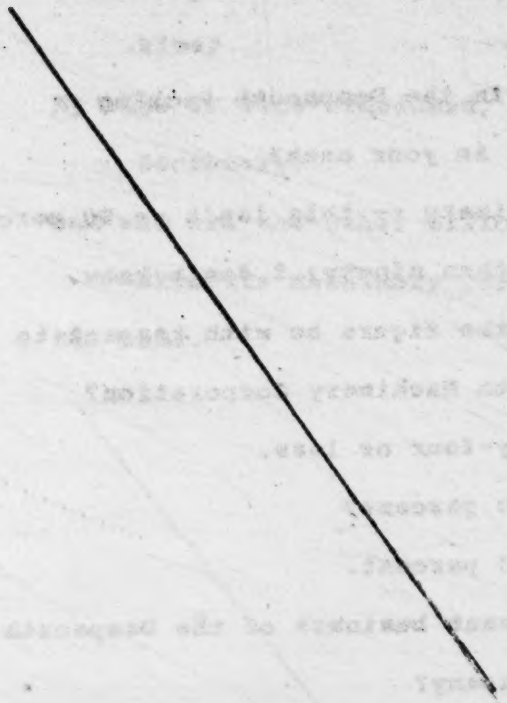
A But more than 50 percent.

Q What is the present business of the Deepsouth Packing Company?

A It is in the canned shrimp business.

Q Does it manufacture or offer to sell or sell shrimp deveining machinery?

A Not recently; there has been no sales of any type machinery through Deepsouth Packing Company for some long time, because we separated our shrimp business from our machinery business by two separate companies.



Q When was the last offer for sale or other business transactions relating to deveining equipment made by Deepsouth?

MR. FUCH:

I'm going to enter an objection. I don't see where this is at all relevant to the matter we are supposed to be interrogating Ray on -- that is, the background of this Brasil matter.

MR. SHOUP:

Well, Ray's affidavit talks about the Deepsouth shrimp deveining machine, and it was made yesterday.

BY MR. SEOUP:

Q I am referring specifically to Paragraph 2 of that affidavit.

A Yes, do you want me to explain Paragraph 2?

Q If you will.

A I received an order for a deveiner.

Q Is that an order for a Skrmetta Machinery Corporation deveiner or Deepsouth Packing Company deveiner?

A Well, it is one that is more specifically described as the same as what was the Deepsouth model number and so forth, but

that -- but that was not necessarily -- didn't necessarily mean that Deepsouth had the order; it meant that I had the order -- Ray Skrmetta.

Q As an individual?

A Any kind of way you want it. I am just telling you, I had the order; I had the control of it.

Q When did the Skrmetta Machinery Corporation enter the dovetining business -- the dovetining machinery business?

A This is the first transaction, to my knowledge. No, excuse me. Yeah, that is correct; this is the first transaction in dovetining machines, to my knowledge.

MR. PUGH:

He asked you though when you entered into it.

THE WITNESS:

It would have been approximately the latter part of April or early May, 1969.

BY MR. SHOUP:

Q And what was the nature of that entry? What did Skrmetta Machinery Corporation do at

17

that time?

A In relation to this suit? It was when I had a visit from the man from Comfrio, and I had documentation prior to that. That is why I am not sure of the exact date, but the man visited me prior to and specifically on May 17, 1969. I remember that day, because there was a wedding I was supposed to go to, and I didn't go, and my wife was involved in a minor accident, and this gentleman from Brazil went with me to the scene of the accident, and that is why I tie that date down.

Q When was the first contact of any kind that you had with any representative of Comfrio?

A I just gave you that answer. It was sometime within a month prior to May 17, 1969.

Q Do you have any documentation that would support that answer?

A We have correspondence, but -- dated in May, that I saw in the file. I don't remember what it referred to, but it showed that there was a contact in May of 1969.

Q Who initiated that contact?

A If my memory is correct, I think I received a

phone call from Mr. Roberto Gasparian, G-A-S-P-A-R-I-A-N; and it was Mr. Roberto Gasparian who did visit New Orleans during the time of May 17, 1969 and some days prior, and it was sometime prior to that I remember a contact, possibly by telephone, but I could not be sure.

Q Did you offer to sell to Mr. Gasparian a shrimp deveining machine at that time?

A Yes, sir, I did.

Q And did that shrimp deveining machine include the so-called rocking slitter trough and the vein removal belt?

A Not in the sense that you have stated. We had anticipated selling it without forming the combinations that would be in violation of Judge Rubin's order.

Q What did you tell Mr. Gasparian as to the form in which this deveining machine would be turned over to him?

A I do not recall that. I don't recall what I told him, but I do know what --

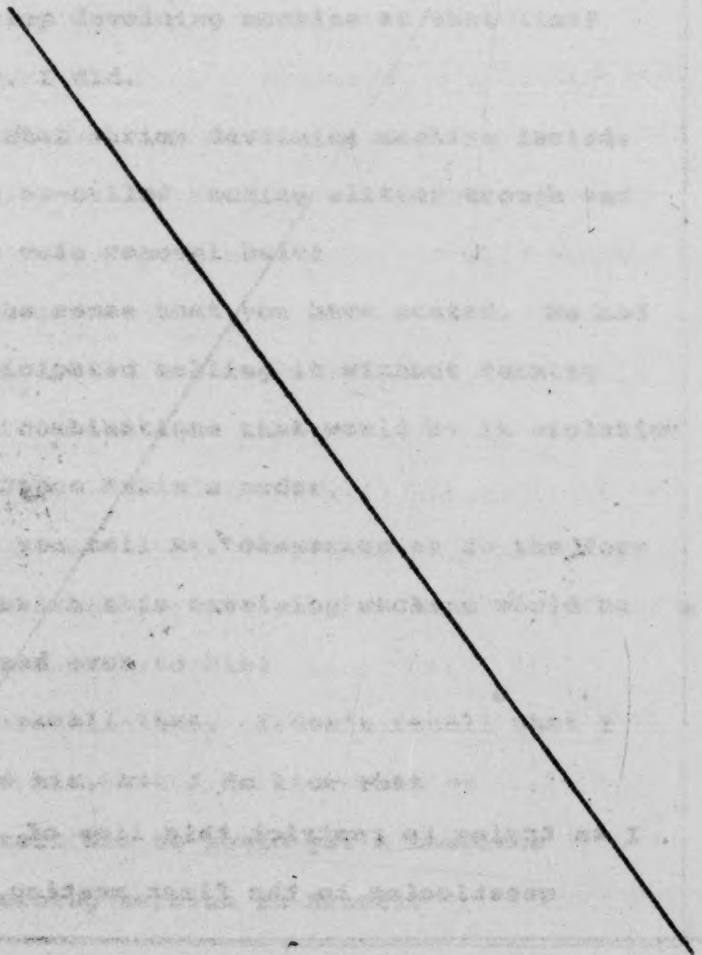
Q Did you tell him he would get a complete deveining machine in Brasil?

A That was my intention, but I don't recall telling him that -- complete in the sense that certain manufacture of it would not be completed until it was arrived -- it had arrived in Brazil.

Q I am trying to restrict this line of questioning to the first meeting you had

with Mr. Gasparian.

A I do not recall specifically what was told to him at that time. Now, that was prior to the -- that was prior to Judge Rubin's entry of his decision, and that is why I don't know exactly. I do know this: whatever we knew at the time, we told him. We gave him all the information and withheld nothing.



Q Well, Ray, my question is very specific. You say Mr. Gasparian visited you sometime in May, is that right?

A Yes, sir.

Q Did you tell him anything about the litigation in New Orleans?

A To the best of my knowledge, I informed him fully of our exact standing at that time in the Court and with Laitram Corporation.

Q Did you inform him of the fact that the Judge had held the Laitram patents to be valid and to be infringed by your rocking slitter trough and your vein removal device?

A I don't -- I think I have answered that already, and I hope we don't get to hearing on words. I am not trying to avoid your question.

Q So you did tell Mr. Gasparian, in mid-May, that Judge Rubin had held the Laitram patents to be valid and to be infringed by the rocking slitter trough and vein removal belt?

A I didn't tell him that; I only told him what was available at that time. I informed him in full of that. I cannot state beyond that. I informed the man completely and 100 percent completely. I withhold nothing from him, and I can't be more specific than that to you.

Q Okay. Let me go at it another way. What did you tell him?

A I don't recall what I told him except that I

informed him fully of everything that had taken place up to that time, withholding nothing from him.

Q I take it you did offer to sell him a rocking slitter trough and vein removal belt at that time?

A Not in the sense that you stated, no.

Q In what form did you make that offer?

A In the form that would not be in violation of Judge Rubin's order.

Q Well, what -- what form was that?

A That there would be no water to the trough; there would be no blades; and to avoid the combination of water blades and rocking troughs.

Q Right. Could you be a little more specific?

A No, sir, I can't; that is as specific as I can be.

Q What you are saying then is that you told Mr. Gasparian at that time that you would package the water supply header, the blades, and the rocking troughs separately and in separate packages?

A I did not say that, but that most probably could have been told to him. I do not

recall specifically what I told the man, but that basically was the intention of what I wanted to inform him of.

Q But you -- but you say that you did not tell him that. I am still -- I am still at sea as to what you told him.

A Please don't be at sea too long, because I don't want to keep going over this again. I am telling you, I do not recall specifically what I told the man, except I informed him completely as to exactly what was the situation at that time, withholding nothing and adding nothing, but he was completely informed of our exact status as to the day he visited with us, and as subsequent events happened, we kept him informed.

(Whereupon, the document referred to by Counsel was received and marked "Deposition Exhibit No. 1," for identification.)

BY MR. SHOUP:

Q Mr. Skrmetta, did you write this letter or the original of this letter?

A Yes.

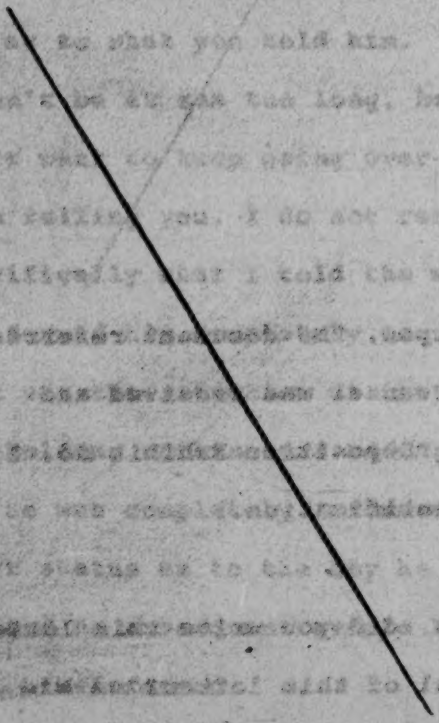
Q Did you send it to Mr. Gasperian?

A I think so.

Q You think so. You can't remember whether you sent that letter or not?

A Yes, this is my letter, and to say that I sent it -- I wrote the letter and dictated it to the girl, and I presume

she mailed it. I personally didn't mail it, but it was intended that that letter should go to the gentleman, and I hope he received the original of it.



Q Mr. Skrmetta, is the meeting which you referred to in that letter, is Deposition Exhibit 2 -- is that the one that we have been discussing over the last two pages of the deposition -- the meeting with Mr. Gasparian?

A Yes, sir.

BY MR. SHOUP:

Q Have you ever met with anyone from Confrio except Mr. Rubens Gasperian?

A Personally?

Q Yes.

A No.

Q Have there been any meetings with you -- by you with Mr. Gasperian other than the

meeting that we have been discussing in May of 1969?

A Not through personal contact.

Q What type?

A Telephone.

Q You telephoned Mr. Gasparian?

A And he has telephoned me, and I had calls from his brother, Mr. Rubens Gasparian.

Q I thought we were just talking about Mr. Rubens Gasparian?

A I am sorry; you said Mr. Gasparian. That is Mr. Roberto Gasparian that was referred to in the letter.

Q Roberto; I see, but there has been no other meeting in the United States with any other representatives of Confrio?

A Other than telephone meetings, I do not recall any other meeting.

Q After the meeting in May, when was the next time that you offered a rocking slitter and a vein removal apparatus to Mr. Gasparian?

A I do not recall any secondary offering. Whatever -- whatever came to happen in the end was the result of the beginning,

and there was never any particular breakoff or anything in the negotiations.

MR. SHOUP:

I would like to have the Reporter mark as "Deposition Exhibit 3" a letter from Skrmetta Machinery Corporation to Confrio, attention Mr. Roberto Gasparian, dated July 23, 1969, and after the Reporter marks it, or before, will you, Mr. Skrmetta, indicate whether that letter was, in fact, sent to Confrio?

A Yes.

(Whereupon, the document referred to by Counsel was received and marked "Deposition Exhibit No. 3," for identification.)

BY MR. SHOUP:

Q And please, Mr. Skrmetta, do the same with respect to a letter of August 9, 1969, from Deepsouth Packing Company, Inc., to Confrio.

A Okay.

(Whereupon, the document referred to by Counsel was received and

marked "Deposition Exhibit 4," for identification.)

BY MR. SHOUP:

Q And your same answer applies to Deposition Exhibit 4, which is a letter dated --

MR. PUGH:

August 9.

BY MR. SHOUP:

Q -- August 9, 1969?

A (Nodding affirmatively.)

Q Mr. Skrmetta, would you please look at these three pieces of paper. One is a copy of a letter from Skrmetta Machinery Corporation to Confrio, dated September 4, 1969, and attached to it is a letter from Confrio to Skrmetta Machinery Corporation, dated the 21st of August, 1969, and a carbon copy of invoice No. 127, dated September 4, 1969, indicating "Pro Forma Invoice." Let me first ask you if you sent the September 4 letter to Mr. Roberto Gasparian, and did that letter enclose the Pro Forma Invoice, and did you receive the August 21 letter from Mr. Gasparian?

A Yes, sir. 32

MR. SHOUP:

Would the Reporter please mark these as "Deposition Exhibits 5, 6, and 7."

(Whereupon, the documents referred to by Counsel were received and marked "Deposition Exhibit No. 5," "Deposition Exhibit No. 6," and "Deposition Exhibit No. 7," for identification.)

THE WITNESS:

This is not the Pro Forma Invoice that actually was the one that actually was consummated in January.

BY MR. SHOUP:

Q But that Proforma Invoice was sent to Mr. Gasparian --

A Yes.

Q -- in September? We will get to that, I am sure.

A Okay.

Q Mr. Skrmetta, will you please examine a carbon copy of a letter dated October 30, 1969, from Skrmetta Machinery Corporation to Confrio, and tell me whether or not this

letter was dispatched to Confrio? 33

A Yes, sir.

MR. SHOUP:

I would like to have that letter marked as "Deposition Exhibit 8."

(Whereupon, the document referred to by Counsel was received and marked "Deposition Exhibit No. 8," for identification.)

BY MR. SHOUP:

Q Mr. Skrmetta, there are three documents here: An original and two carbons of an invoice -- another Invoice No. 127, dated October 30, 1969. Were any of these documents sent to Confrio? Or copies of them?

A I don't recall; from the folding in the paper, it indicates it may possibly have gone, and it may possibly have come back when the proper one was prepared -- I think in December -- but I don't -- I don't have any way of telling that from-- from what is at hand here.

MR. SHOUP:

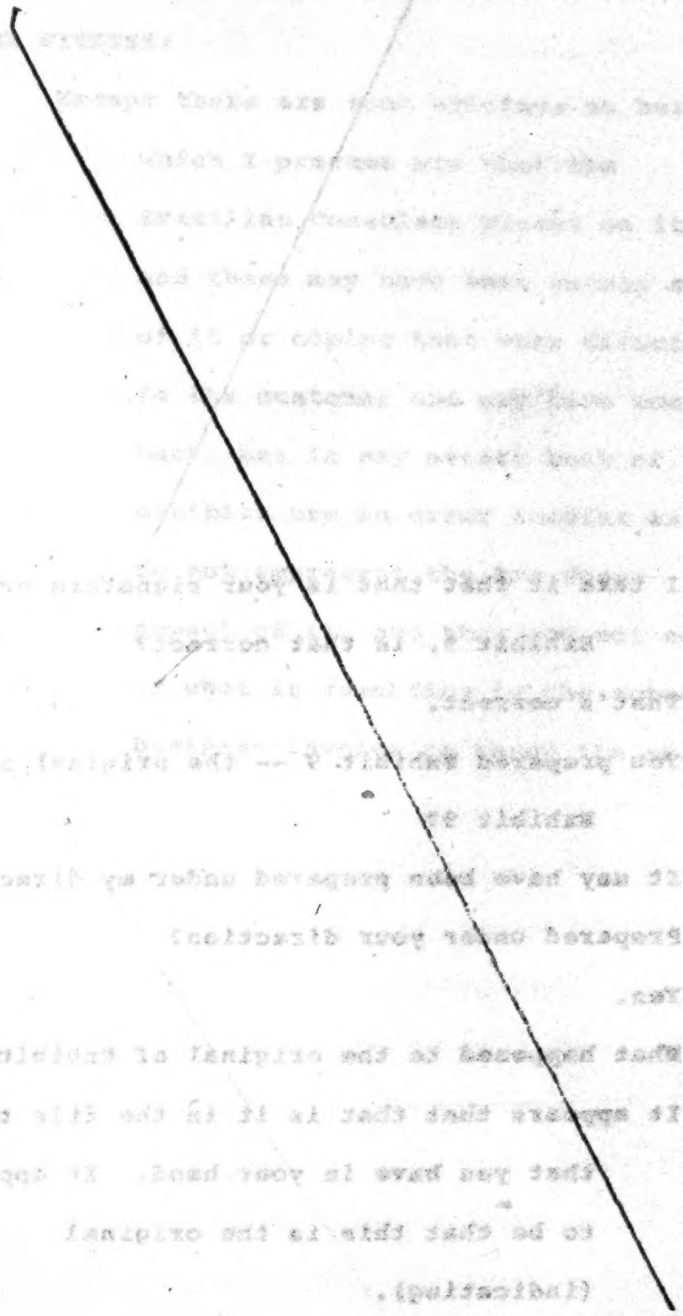
Now, I would like to have the Reporter

mark a Xerox copy of a Skremtta Machinery Corporation Invoice No. 127, dated October 30, 1969, as "Deposition Exhibit 9," and let the record show that this document is not -- was produced by Laitram and not by Deepsouth, and so it does not come within the terms of agreements relating to other documents that you have produced. 34

Q What is the difference between a Pro Forma, say, and an invoice that is not a Pro Forma Invoice?

A A Pro Forma Invoice, in my definition of it, is something that means there may not necessarily be business. It is more of something for people to show to their government to see if they can get a license to get an import permit or provide money to buy it. It is really to give them something to reach a decision and reach the finish of business to place a firm order. Now, that is what disturbs

me with this Invoice 127; it doesn't



Q I take it that that is your signature on Exhibit 9, is that correct?

A That's correct.

Q You prepared Exhibit 9 -- the original of Exhibit 9?

A It may have been prepared under my direction.

Q Prepared under your direction?

A Yes.

Q What happened to the original of Exhibit 9?

A It appears that that is it in the file there that you have in your hand. It appears to be that this is the original (indicating).

MR. SHOUP:

Well, we better mark that one. Now, that will become Exhibit 10. 38

THE WITNESS:

Except there are some writings on here which I presume are what the Brasilian Consulate placed on it, and these may have been excess copies of it or copies that were directed to the customer and may have come back, but in any event, both of these exhibits are in error insofar as they do not represent the Pro Forma aspect of it, and they are not copies of what is resulting in the actual business invoice to cover the sale.

Q Is it customary for you to sign Pro Forma Invoices, Mr. Skrmetta?

A Ordinarily, I don't think so.

Q Does Deposition Exhibit 9 represent a firm offer on your behalf to Confrio?

A With the exception of the words "kit form," yes, which was in the actual business invoice.

Q Is there any document -- contemporaneous document -- I don't want to confuse you -- a document that was prepared at this time that went to Confrio that uses the words "kit form"?

A I don't recall that, and that is evidently why this particular set of invoices was changed, because they did not show the kit form wording.

Q Is Deposition Exhibit 9 the document on which Confrio obtained the import license? 40

A Now, that I don't know. I presume they obtained the import license based on the Pro Forma Invoice, but whether they used this or not, I don't know.

Q All right. What Pro Form Invoice did they use to obtain the import license on?

A I don't know that any specific Pro Forma Invoice was actually the vehicle to get the import license. I'm not familiar with that. I can just tell you that these documents here are not the ones that are actually covering the transaction, and at some time in the negotiations, they may well have been prepared in error or not in full, or they may well have been changed to reflect the true meaning of the exact sale and shipment.

BY MR. SHOUP:

Q All right. Now, Mr. Skrmetta, I am handing you

a carbon copy of Skrmetta Machinery Corporation -- the invoice is again No. 127. This time it is dated December 22, 1969, and I would like you to tell me whether or not that is a carbon copy of a document prepared under your direction? 41

A Yes, and this entire transaction -- from the very beginning to the very end, there has only been one transaction, and some of these papers that may have been prepared and dated at a different date all bore the one number, and this Pro Forma is the one that I think the actual invoice covering the shipment is going to be prepared for -- from.

MR. SHOUP:

All right. We better mark that as "Deposition Exhibit 11," and this is a carbon copy of Skrmetta Machinery Corporation Invoice No. 127, dated December 22, 1969, headed "Pro Forma," with no indication of a signature by Mr. Skrmetta.

BY MR. SHOUP:

Q Do you have a signed copy indicating a Pro Forma or otherwise -- any invoice of Skrmetta Machinery Corporation indicating the sale of the Skrmetta dewainer in kit form?

A If I understood your question, taking out any changes, corrections, or errors, there is only one that has been acted on, and that is the Exhibit No. 11. That is the one that is going to be reflected in the actual invoice -- the actual sale of the thing. The actual preparation of the business invoice has not been prepared yet.

Q Let's go on to something else. I don't think you have answered the question. 43

A Please, I don't intend to fail to answer your questions. The business invoice has not been prepared, and it will be prepared from this Exhibit No. 11. I can only be very specific that that is the best of my understanding.

Q So, as of today, no piece of paper or invoice has been sent to Brazil saying "kit form," is that right?

A That is not true.

Q Well, where is the kit form invoice?

A This one went to Brazil (indicating).

Q That one went to Brazil?

A Yes, sir, this is the one that actually resulted in the business transaction being completed.

BY MR. SHOUP:

Q Let me show you a copy -- excuse me, the

original letter from Confrio to Skrmetta Machinery Corporation, dated December 31, 1969, enclosing the import license -- "The import license of our order." And this consists of a one-page letter and a two-page import license. Would the Reporter please mark these as "Deposition Exhibit 12-A, -B, -C," I guess.

(Whereupon, the documents referred to by Counsel were received and marked "Deposition Exhibit No. 12-A, -B, and -C," for identification.)

MR. SHOUP:

I would like to have the Reporter mark for identification -- let's see, we will call this an original Form IB-205 dated -- or probably originally dated 10/64 of First Western Bank, and the date on the document is January 19, 1970, and it encloses -- there are two documents attached to it which -- which one is a carbon of the other, and it is a confirmation of cable of

Banco de Credito Nacional, Brasil, and I take it that this is a Letter of Credit. 45

(Whereupon, the documents referred to by Counsel were received and marked "Deposition Exhibit 13-A, -B, and -C," for identification.)

MR. SHOUP:

Okay, will you mark this document as "Deposition Exhibit 14-A," and "14-B," and Mr. Pugh has stated, subject to correction should error appear, that 14-A and -B are identical to 12-B and -C. 14-A and -B are identical to 12-B and -C.

(Whereupon, the documents referred to by Counsel were received and marked "Deposition Exhibit 14-A and -B," for identification.)

BY MR. SHOUP:

Q All right. Now, correct me if I am wrong, Mr. Skrmetta, but you say, if I understand your testimony, that you sent Deposition Exhibit No. 11 to Confrio, is that correct?

A Yes, sir.

BY MR. SHOUP:

Q Mr. Skrmetta, when the Deepsouth Manufacturing Company manufactured slitter troughs for sale and use in this country, did it ship the slitter troughs to the customer's plant with the blades in them?

A No, sir.

Q The blades were installed at the customer's plant?

A By the customers. There were never any blades specifically sold or included with the machine.

Q We are talking about the slitter troughs you sold to Southern Shell and others like Southern Shell.

A That is correct.

Q But other than that, there was no part missing, is that correct, on those slitter troughs? The water supply header was on those slitter troughs?

A As far as I know that is correct.
Q And what about the vein removal belt? In what form was that shipped to the customer's plant, do you recall?
A It was installed and ready to operate.
Q The belt was on the device?
A Yes, sir.
Q Placed on the device at your plant?
A Yes, sir.
Q Let's get to the specific situation at the present time. I understand there has been a slitter trough and a vein removal belt manufactured by you, that is presently about to be shipped to Brazil, is that right?
MR. CLAVERIE:
You don't mean a belt.
BY MR. SHOUP:
Q I mean the vein remover, is that correct?
A We don't -- in my terminology, that doesn't quite -- that is not my words for what we made.
Q Tell me in your words what you made?
A We have made a machine that does not have water to the trough or blades, steering

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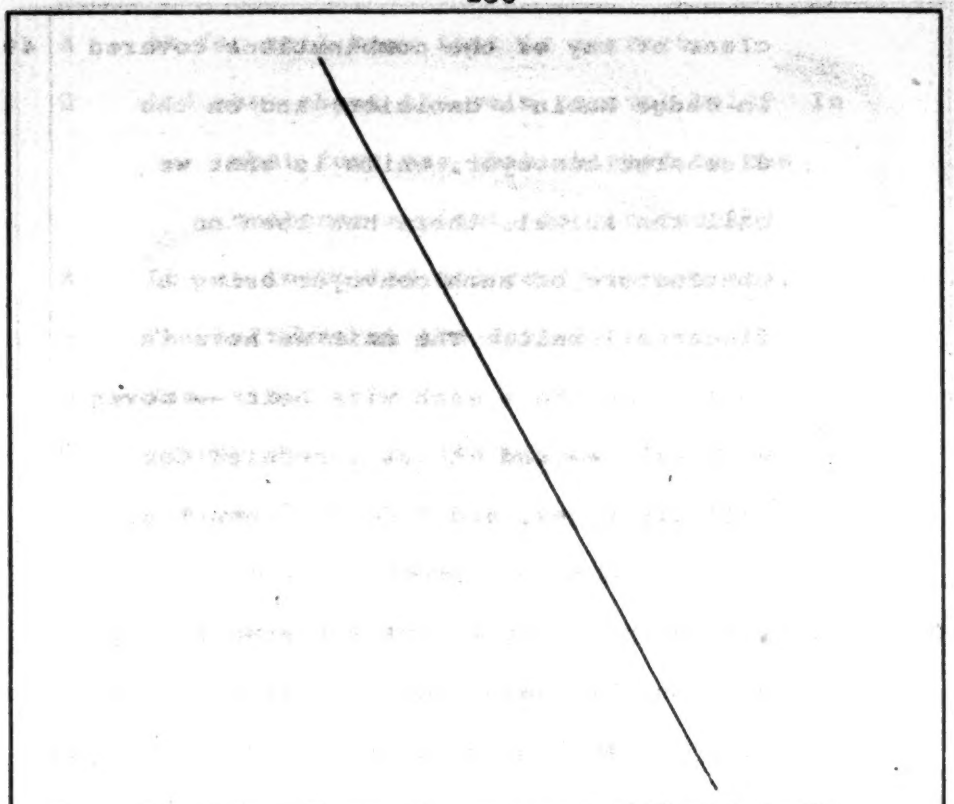
clear of any of the combinations covered in Judge Rubin's decision, and on the discharge conveyor, which is what we call the animal, there has been no manufacture of such conveyor using a fingernail belt. The unit we have is to accommodate a mesh wire belt -- woven wire belt -- and it was scheduled for delivery today, and I do not know that it came in or not. 49

Q You were not planning to put the punched-lip belt on this vein remover that you were going to sell to Brazil?

A That's correct.

Q You were going to utilize a woven mesh belt of the type that is in exhibit at the District Court?

A That's correct.



Q Is either Gasparian or anybody at Confrio, aware they are getting a punched belt -- a woven belt and not a punched-lip belt?

A I don't know. The manufacturer of the machine -- we are the manufacturer and will not put a fingernail belt in it, and I am not going to say that the fingernail belt could not be substituted on it by someone later on -- installed in the foreign country, but I wanted to make that clear, that the distinction of how we are manufacturing it -- it does not

have a fingernail belt and will not have it on the completion of manufacture in the United States -- such a fingernail belt. 51

Q Have you arranged for Confrio to secure a fingernail belt on the arrival of the machine in Brazil or at some future date?

A I am not against sending a fingernail belt in a separate shipment along with it, in case they want to try it, and if they want more, I would simply propose to sell it to them.

MR. PUGH:

Ray, rather than going around on technicalities of words and so forth, why don't you tell what you are intending to do with the fingernail belt, if anything, insofar as the shipment we are all considering.

I told you that we will ship a fingernail belt, but there would be no assembly structure actually using it. 52

MR. PUGH:

May I ask a question?

MR. SHOUP:

Okay.

VOIR DIRE EXAMINATION

BY MR. PUGH:

Q Are you intending to ship in a separate crate a fingernail belt?

A Yes.

Q Along with the assembled other crates?

A Yes.

BY MR. SHOUP:

Q But the vein removal device itself is going to have a wire mesh belt?

A It is intended to have.

Q Is it or isn't it?

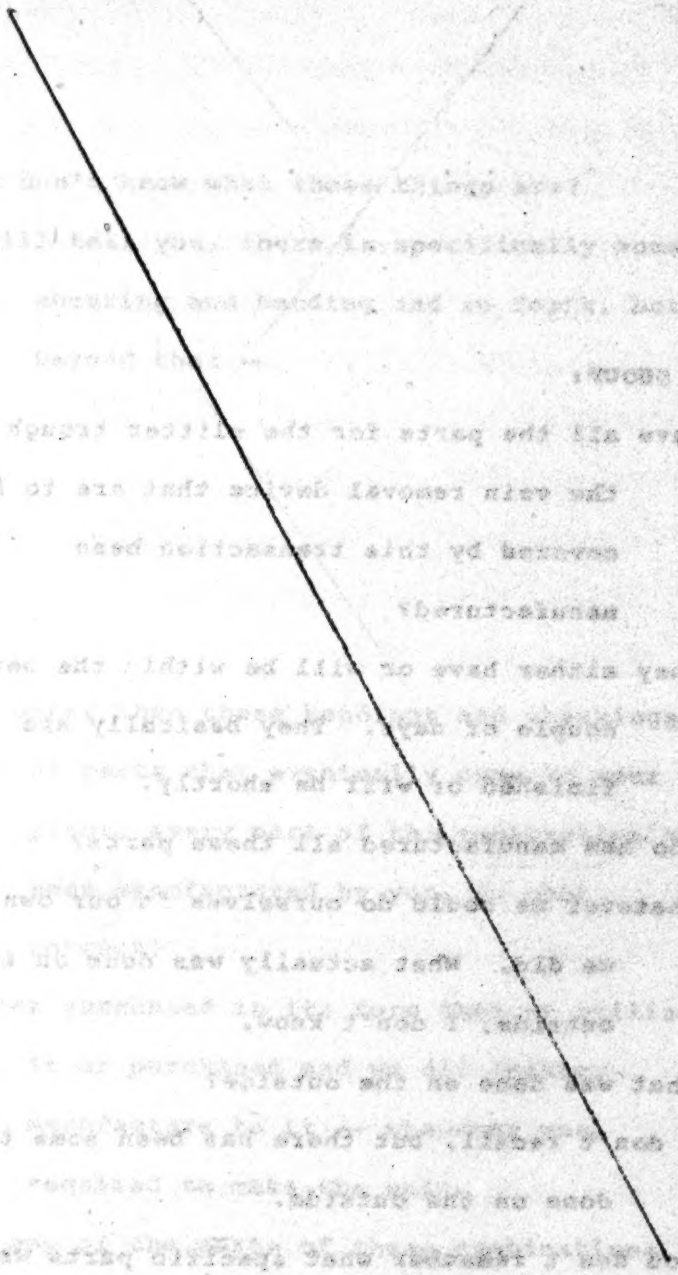
MR. PUGH:

The shipment hasn't come yet.

A If the belt arrives today that we have ordered for the unit, it will be installed and shipped with such woven wiring belting.

Q On the machine? 53

A On the machine.



BY MR. SHOUP:

Q Have all the parts for the slitter trough and the vein removal device that are to be covered by this transaction been manufactured?

A They either have or will be within the next couple of days. They basically are finished or will be shortly.

Q Who has manufactured all these parts?

A Whatever we could do ourselves in our own shop, we did. What actually was done on the outside, I don't know.

Q What was done on the outside?

A I don't recall, but there has been some things done on the outside.

Q You don't remember what specific parts were made on the outside?

Q You don't know what those things are?

A I will tell you, there is specifically some shearing and bending and so forth, but beyond that --

Q But other than these bendings and shearings of parts that eventually came to your plant, every part of this combination has been manufactured by you, is that correct?

A Either purchased in its form that we utilized it or purchased and we did further manufacture to it -- whatever was required to make the unit.

Q Are any of the parts of these combinations utilized in any other aspect of commerce,

to your knowledge?

A Oh, certainly, certainly.

Q What?

A If I understand your question correctly, the motors are standard motors.

Q Okay, let's talk about the blades.

A All right, the blades are a manufactured item by Blade Manufacturing Company.

Q Are they manufactured in the length that you utilized them in your slitter trough, for any other purpose?

A If your question is, does the manufacturer make various lengths of blades for other people, yes.

Q No, that is not my question.

A That is my understanding.

Q My question is, does the manufacturer make blades in the lengths used in your slitter trough for any other purpose?

A I don't know anything -- what they make. I only know that the control holes on the length of the blade is a standard part that they use in the manufacture of blades of certain lengths -- various lengths. Now, how long they make them, I truly

don't know.

Q You don't punch the holes in the blades?

A No, sir.

Q Does one blade run the length of the trough?

A No, sir.

Q I've forgotten; how many blades does it take?

A It can use -- basically use two, but it can use any -- any certain usage of the holes that the manufacturer has, which is a standard that they own themselves, and that is the way it guides the blades through the machinery -- the holes. They make them in any standard length, utilizing their own stock holes, and if you have a specific design of some other shape that you provide to make for yourself, well then, that particular thing they wouldn't use for anybody else, but the blade we are using is a standard manufactured product of these people.

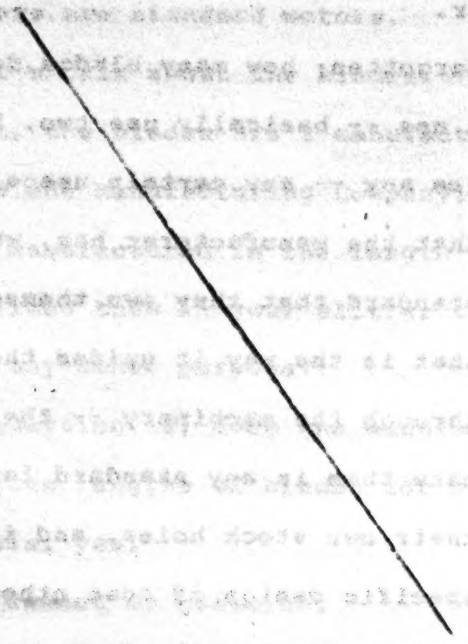
Q Have you provided them with any information relating to special holes of any kind?

A No, sir.

Q But you do not know --

A My father placed the original order for the

blades many years ago, and he used the stock blade insofar as the manufacturer, at that time, was concerned, with the exception of the length. I understand



Q No, I am asking whether the blades you buy from the manufacturer are used -- are sold for any other purpose by that manufacturer?

A I only know what we use them for, and we use them for the deveiner, and the manufacturer uses them for many purposes, and the biggest purpose he has is scraping tools, and all kinds of uses for the same blade.

Q Of the specific length utilized in your

deveiner?

A I don't know what length they manufacture them, but they make them in all lengths, much beyond the length we buy them in. I have seen with my own eyes blades made that go six feet long, and the blades we buy are five feet long.

BY MR. SHOUP:

Q Let's talk specifically about the slitter trough that is headed for Brazil. There are no blades in it?

A That is correct.

Q What about the header that delivers the water?

A Never had a water header on it. We are going to provide a water header and place it in a different container.

Q Other than the blades and the water header, is the machine completely assembled? 61

A No.

Q In what other ways is it disassembled?

A Well, it is going to be put in boxes. It is mostly parts -- some sub-assemblies.

Q What is the nature of the sub-assemblies?

A Like the braces on the side.

Q The blade holders go in the pan?

A Sir?

Q Will the blade holders go in the slitter pan?

A I think so; that is a good place. They've got the length for them. We have not made the boxes yet, but that is my intention, to make the boxes.

MR. PUGH:

For the purpose of clarification, was the question whether the blade holder was going to be attached to the pan or put in the same box?

BY MR. SHOUP:

Q All right. Are the blade holders going to be attached to the pan?

A Most probably will be, and it depends on the box and how it works out best -- to crate

it or whether it works best to clump them in a bunch or what, but I presume it is better to place them right on the trough. 62

Q But other than that, will the crank arm be connected?

A No, sir.

Q Let's go to the vein remover.

MR. PUGH:

May I interject a question just to clarify?

MR. SHOUP:

Yes.

MR. PUGH:

Is the trough on its support assembly?

THE WITNESS:

We fitted it on to the bearing mounts, and it was not -- the motor or nothing was ever hooked up -- nothing ever hooked to the electricity to run it -- no rocking of it.

MR. PUGH:

Was the support structure ever fully assembled to the trough?

THE WITNESS:

See, the basic trough and the little angle iron frame that stiffens it -- that is going to be off sitting in a flat little box, and the motor -- the connecting arm -- I don't know where we will put it, but it will fit somewhere. It will fit a million places. It is a small thing, but basically, the rocking table -- which they want to call the slitter trough -- will be in a separate box. 63

BY MR. SHOUP:

Q The vein removal -- the punched-lip belt you are making -- is that yours?

A We are utilizing one that we made a few weeks ago.

Q A punched-lip belt?

A Yes.

Q That you made yourself?

A Right.

Q And you buy the material and then punch the holes in it, is that correct?

A Right, right, right; that is a simple operation. It takes a very small punch, and any toy machine shop anywhere in the

country can make that. It is a very simple thing. 64

Q Just to make the record absolutely clear, I take it these machines, when assembled, will be identical to the machines that have been adjudicated in this country in the District Court?

A When the machine arrives in Brasil, it could well be assembled in such form as to be identical to what was made in the United States. In answer to your question, it could be. Whether the owner down there would elect to complete the assembly or whether they elect not to complete the assembly, that is their business decision, but it could well be exactly what you have asked.

MR. PUGH:

Is it their intention to assemble it?

THE WITNESS:

I can only tell you that it is my hope that they do it, and it is my understanding they will, but agents from Laitram Company have been intimidating these people, and if

they do make a different decision, then you certainly can understand why I say they may not use it. 65

BY MR. SHOUP:

Q Do you manufacture any other type of deveining machinery other than the machinery that was involved in litigation?

A We have not brought it to complete manufacture, but we have hired an engineer who has a number of patents on shrimp processing equipment, and we have been toying with one form of his device, and we were thinking about manufacturing it, but there are some business decisions to be made on it.

Q But this would not, in any way, be something that would be involved with this Brazil transaction?

A No, no.

Q The Brazil transaction will involve the parts utilized -- the same parts -- parts identical to the machinery manufactured by Deepsouth?

A Parts in the sense of parts, but not in the sense of combinations.

Q Mr. Skrmetta, I am not trying to trap you.

A I understand that. That is why I am answering your question. There has been no assembly of those parts -- no formation of the combination.

Q Do you agree with me that the parts are identical?

A Sir?

Q Do you agree with me that the parts are identical?

A There might be some technical difference, but basically they are identical.

MR. PUGH:

We will stipulate that if the machine were assembled here in the United States, it would be an infringement of the patent.

Q Mr. Skrmetta, this sale to Brasil is to be made FAS New Orleans, is that correct?

A I think that is correct, yes.

Q It is correct?

A Yes.

BY MR. SHOUP:

Q Continuing along, there are some stamps on this document, Mr. Skrmetta, dated October 31, 1969, from the Brazilian Consulate in New Orleans. Did you secure -- or did you or someone under your direction arrange to have those stamps placed on the document?

A Yes, I think I recall having been told to make

a copy of the Pro Forma Invoice, leaving off the word "Pro Forma," and we got some other instructions from the Brazilian Consulate, such as what to do, such as -- I think they told us to sign this invoice, and we submitted that to the Brazilian Consulate. That is why I think the word "Pro Forma" most probably is off of this copy.

70

Q Who pays the freight on the shipment? Who is going to pay the freight on the shipment?

A When something is shipped FAS New Orleans, the purchaser pays the freight.

Q Who will the bill of lading be made out to?

A To Confrio.

Q And will the bill of lading be delivered to

you? 71

A No, sir, I may see a copy of it, but the original bill of lading — I may not ever see it.

Q Where will that be delivered?

A To Brazil.

Q Where will the consideration that you receive — where will you obtain the money that you will receive for the sale of this machinery?

A HERE IN NEW ORLEANS.

Q I see, and how will you obtain that money?

A From the bank.

Q In what manner?

A In the form of a check.

72

Q I see, but the payment will be made by a bank in New Orleans to you here?

A No, no, I said we will get the money in New Orleans from a bank, and I presume it will come from California.

MR. SHOUP:

Let the Reporter mark this H. A. Gegarty Sheet, Delivery Order 2214, as "Deposition Exhibit 16."

Q What is this document?

A This is -- at the time a shipment will be made, this is called a "dock receipt."

Q But the machinery -- it describes "three boxes machinery," is that correct?

A Yes, sir.

Q Could you describe to me what each one of those boxes contains?

A They have not been -- only one box has been partially made. The other two boxes have not even been started.

Q Are you going to make the boxes yourselves?

A I will make the boxes.

Q Personally, under your supervision at the factory?

A That is why it doesn't show any size, because I have not decided how to make the boxes.

Q Is it fair to say you will put the slitter device in one box and the jet washer in another box, and the discharge conveyor in another box?

A Say that again.

Q Would there be one box for each one of the components of your developing machine?

A There will be a box for the main trough. The discharge conveyor that you mentioned --

Q Yes, well --

A -- may well be included in a box with the major frame.

Q Major frame of what?

A Of the unit; the major basic frame of the entire developer.

Q I see. Then you really don't know what is going to go into these three boxes?

A No, I haven't done it yet, but I will fit them in where it is convenient to fit them in.

MR. SHOUP:

Sure. Will the Reporter please mark a letter from Ray Skrmetta, President of Skrmetta Machinery Corporation to C. Emmett Pugh, dated December 17, 1969, and attachment, two documents.

(Whereupon, the documents referred to by Counsel were received and marked "Deposition Exhibit No. 17-A, -B, and -C," for identification.)

BY MR. SHOUP:

Q Do you have a copy of your letter of December 17 to Mr. Pugh?

A Yes, sir.

Q And the attachments?

A Yes, sir.

Q Do you notice that you use the sentence "Not all models available for sale in the United States"? Are there any models of the Skrmetta Automatic Shrimp

Deveiner available for sale in the United States?

A Well, we have been, for many months, trying to put out the unit that was invented by an engineer who is working for us, and we had thought that we would have gotten it out much earlier, and that is possibly what we are referring to.

Q Are these machines available at the present time?

A No.

Q So there are no Skrmetta Automatic Shrimp Deveiners available in the U.S. at the present time to a purchaser in the United States?

A That is basically correct as of today. We also have a negotiation with another party, but these negotiations are very weak, but the man has been to see me several times, and we have missed getting together, and he is supposed to have had a deveiner for many years, and he wanted us to manufacture it, and we didn't, and that too was hanging fire, but we didn't do anything on it yet.

Q Mr. Skrmetta, I want to show you Paragraphs 5

and 6 of your affidavit submitted as part of your reply papers. Would you take a look at those, please? 79

A (Witness reviews documents.)

Q Have you had a chance to review that?

A Yes, sir.

Q What other foreign countries are involved here?

A Many other foreign countries. The ones that come to mind quickly are Malaysia, Senegal, in Africa, S-E-N-E-G-A-L, and Mozambique.

Q Have these customers in these foreign countries -- are they aware of your intention to ship this machinery to them in kit form?

A Yes, sir.

Q They are?

A Yes, sir.

Q Have you written them letters to this effect?

A Yes.

Q How many letters?

A There have been a great number of letters; in each letter I called their attention to the standing of the lawsuit here in the United States so that there is no misunderstanding about it.

Q Who was the first one?

A I don't recall who was first, except that I know negotiations had gone on at prior times to 1969.

Q This is with respect to Brazil, Mozambique, Senegal and you named another country?

A Malaysia.

Q Malaysia. Any other countries?

A Many other countries.

Q Many other countries?

A We have had inquiries -- all of the advertisements that we have had were basically aimed outside of the United States insofar as deveiners were concerned.

Q But the parts referred to -- you used the phrase "unassembled parts" in Paragraph 5 of the affidavit. Those parts are identical to the parts utilized in the

manufacture of Deepsouth Packing Company 82
deveiners in the United States previously?

A If such parts had been assembled in the United States, they would come under the decision of Judge Rubin if they had not been foreign.

Q When did you first see the words "kit form," with respect to Mr. Gasparian or any representative of Confrio?

A I don't recall specifically, but it would seem in the very late part of 1969 that the actual words "kit form" were mentioned. The meaning of "kit form" had been conveyed to them from when we first met them.

Q You mean the first time that you saw -- here we are back at the beginning of the deposition. The first time that you saw

Mr. Gasparian, you indicated that the
deveimer would come to him disassembled?
A No, I indicated to him the standing of the
lawsuit against us at that time, and we
were awaiting the entry of the decision
of Judge Rubin, which I think was in
June of 1969, and up to that time, we had
indicated to him what -- the way the
decision looked like it was going to come
out, but we told him we had to wait till
it was entered before we would know
exactly; and then, at that time or shortly
after, we informed him what the decision
meant and that it covered certain
combinations and that we would be
prohibited from forming those combinations
in the United States.

Q I would like to hand you a little note slip (indicating). Is that your handwriting?

A Yes, sir.

Q When did you make that note?

A Last night.

MR. SHOUP:

I see. Well, the data will be reflected in the deposition. Will you mark that as "Deposition Exhibit 19."

(Whereupon, the document referred to by Counsel was received and marked "Deposition Exhibit No. 19," for identification.)

BY MR. SHOUP:

Q Mr. Skrmetta, was that cable, in fact, sent?

A Not in its exact form; I modified it after I gave it to the operator. I found out I could get 22 words, and I added some more

afterwards, personally, last night.

Q Okay, but the substance of that message in that note was sent?

A That's correct.

MR. SHOUP:

Will the Reporter mark this letter dated December 22, 1969, from Skrmetta — from Deepsouth Packing Company, Inc. to Edson Cavalsanti Valence as "Deposition Exhibit 21."

(Whereupon, the document referred to by Counsel was received and marked "Deposition Exhibit No. 21." for identification.)

BY MR. SHOUP:

Q. Mr. Skrmetta, tell me if you wrote that letter to Mr. Valence?

A Yes.

A Well, all of the invoices cover one transaction, and up to January, 1970 -- the Letter of Credit was established -- prior to that time -- they all meant one thing -- "Pro Forma Invoice."

BY MR. PUGH:

Q What were they to cover insofar as the physical apparatus or items that were to be given under such an invoice or to be covered by such an invoice?

A They all intended the one thing, and that is the machine that we are currently building and hope to have finished today -- a machine that avoided the manufacture of any combinations that would be in violation of the present injunction against us by Judge Rubin.

Q Now, just to make sure the record is clear, that statement applies equally as well to the invoice dated September 4 as it does to the invoice dated December 22, is that correct?

A They are all basically the same. The only thing, where the word "Pro Forma" is left off, it appears to have been left off based on instructions we received from the Brazilian Consulate, but other than that, it all means one thing -- the same identical transaction, the same identical machine, and the same identical manufacture that we are completing now.

Q Did you, at any time, indicate to the customer in Brazil, that is under discussion, that you would provide them with a completely assembled deveiner -- that is, assembled completely in the United States?

A No.

Q Then I presume, at all times, you were contemplating a disassembled conveyor -- or rather a deveiner in the United States?

A That is correct.

Q What do you mean by "disassembled"?

A Well, "disassembled" basically covers more than the real meaning of "disassembled." "Disassembled" in conjunction with Judge Rubin's injunction against us means we would not manufacture the combinations that are outlined in his injunction.

Q What, for example, in your mind, is the combination contemplated under Claim 3 of the 218 patent?

A First of all, there has been no document in the form of a legal document submitted to me to interpret, but it is very clear in the Judge's decision that the combination of water at the top of our developer trough combined with blades in the rocking form makes what be found to be the legal equivalent of infringement, and the absolute non-manufacture of such combination then was completely within

our right and not against the injunction issued by the Judge.

Q I am not sure now exactly where we are. We were tracing the invoices, and I believe you did clarify them. Let me go one step further. You had mentioned that the official invoice had not been submitted. Could you explain that further?

A Yes, sir, we had been furnished information from Brazil, and it is included on the letter of credit and the license, with what the proper wording that they desire should be on the invoice.

Q When will you submit the official invoice?

A The submission -- the submission of the actual invoice will not be made until after the

shipment has been loaded on the steamer.

A I am not sure of the date, but there was a Motion in Judge Rubin's Court modifying the injunction that was issued originally, and on that day, after the Motion had been heard, there was a meeting of the lawyers with Judge Rubin in his office, and there was some representation made to me that I couldn't live with, insofar as talking about contempt proceedings and having had this sale that I considered correct and right that I should do, and I had been informed by the lawyers for many months prior -- as a matter of fact, a long time prior. I knew what I was doing was fair, right, honest, and just, and I didn't want the Laitram Corporation to come, at a later date, and misrepresent to

Judge Rubin that these combinations were manufactured in the U.S. I wanted to bring it out in advance to prevent any trouble at all, because I find that I must prevent trouble in advance, such as we have in machines that we are planning to come out with, that we have been holding up because we know we will be sued by the Laitram Corporation, and we are trying our best to avoid any lawsuit whatsoever, and in the manufacture of new machines, we are even trying to stay more closely in an area where we know we cannot be sued, and we are going to do everything in our power to prevent any combinations, and especially we did not want any unfair issue of contempt raised. 96

It was only after the meeting in Judge Rubin's office between the lawyers and Judge Rubin did this thing try to get specific in the form of writing and everything, to make sure there would be no misrepresentation to Judge Rubin about what we were doing exactly, and that is the reason we asked to have this approved in advance before it was shipped, and why we were trying to originally have the decision of the Judge on this subject many weeks ago, because we felt the pressure of time, and we have delayed it now until this time, and we feel that if it is delayed any more that it will jeopardize the whole thing, because there is no doubt in my mind that there has been misrepresentation by Laitram Corporation's agents to the people in Brazil, and we want specifically to try and not allow them to do anything that will give them any unfair and illegal advantage over us in this transaction.

Q Did legal counsel ever counsel you that you

could provide a devaiser and disassembled
elements for assembly and use in a
foreign country?

A Yes, sir.

Q I next hand you Deposition Exhibit 1, a letter of June 30, 1989, from you to your customer in Brazil, and with specific reference to the first paragraph, there is the wording that "Our side lost," and further the wording that the "forming of these combinations will not present problems of a legal nature in your country and we are willing to guarantee

this fact, up to the full price of the doveining machine."

In that letter, what did you mean by "the forming of these combinations will not present problems"?

A Well, by this time, Mr. Gasparian was fully aware that the lawsuit had been going on for some time and that there were these combination patents -- combination claims in the lawsuit, and we had informed him and I had been informed by the lawyers that by not forming these combinations in the United States it would not be a violation in this country, and the formation of these combinations in Brazil would not be a violation of any United States decision.

Q I next hand you Deposition Exhibit 3, a letter from you to your customer, dated July 23, 1969, and I particularly refer you to the third to the last paragraph in that letter and further refer you to within that paragraph: The statement "We are handicapped by a decision against us in the United States, this was a very

technical decision and we can manufacture the entire machine without any complication in the United States, with the exception that there are two parts that must not be assembled in the United States, but assembled after the machine arrives in Brazil."

Could you please explain what you mean by that phrase?

A Yes, I meant that in the area of the discharge conveyor and on the rocking table slitter, that is the two areas that are the two basic parts where the combination was.

Q Now, in those two letters just handed to you and discussed, namely Exhibits 1 and 3, were you there referring to the same disassembled apparatus that you now intend to ship to Brazil?

A That's correct, except the word "disassembled" doesn't quite cover it. The real truth is that these combinations had never been manufactured and had not been disassembled. They had never been manufactured, but parts that could be manufactured into these combinations will be included in the shipment.

BY MR. PUGH:

Q Did there ever come a time when you were informed that anyone had raised a question as to the propriety of your providing the elements of the patented combination

for assembly and use only in a foreign country, because of the presence of U.S. patents?

A Yes, and this was after the hearing to modify the injunction, that took place sometime in December, and still later that same day when the lawyers visited in Judge Rubin's office, and the report I received after such meeting.

Q Prior to that time, did you ever question the propriety of such acts?

A No, sir.

Q From the correspondence that you have reviewed, and in your discussions with Mr. Shoup concerning your initial contact from May, and the question that we are having shipping -- possible shipment here in February, apparently some period of time transpired before the time you secured an order from your Brazilian customer, is that correct?

A That's correct.

Q When did you receive a definite order for a disassembled or an unassembled deveiner?

A I consider the actual confirmation of the offer

the issuance of the Letter of Credit which we received notice of in January. We received a notice on January 5, and I believe the actual credit did not arrive in our office until after January 20. 109

Q When did you begin manufacturing parts of the deveiner to fill that order?

A The construction did not begin until the latter part of January.

Q Are any of the elements that you intend to ship to your Brazilian customer elements that were used in any prior deveiner?

A No, sir.

Q That is, any deveiner that had been assembled at any time?

A No, sir, they are all new elements.

MR. SHOUP:

May I question him on voir dire?

MR. PUGH:

Okay.

VOIR DIRE EXAMINATION

BY MR. SHOUP:

Q Not new elements, but copies -- exact duplicates of the old elements?

A Basically they may not be identical in a sense.

Q With minor tolerances? 110

A With minor tolerances.

MR. SHOUP:

Back to the same question, if these elements were assembled and used in the United States, would you, Mr. Pugh, concede infringement?

MR. PUGH:

I would concede in view of what Judge Rubin held.

THE WITNESS:

If you asked me, I wouldn't concede infringement. I would say in violation of Judge Rubin's order, and as soon as the Court of Appeals handles it and if they reverse it, that would eliminate the possibility of the word "infringement" having been used in the first place.

BY MR. PUGH:

Q As to these elements you say you began manufacturing in late January, did those elements include blades, a trough, and a water header?

THE WITNESS:

A Yes, sir.

BY MR. PUGH:

Q Have you ever and do you intend to ever combine here in the United States any two of those elements together in any operative relationship?

A No, sir.

Q Do you intend to physically attach the blades to the trough here in the United States?

A No, sir.

Q Do you intend to attach, or have you attached, the water header to the trough structure?

A No, sir.

Q Of those elements, did you manufacture what has been termed a "fingernail belt"?

A Yes, sir.

Q Of those elements, did you manufacture the basic structure of your discharge conveyor but without a belt?

A Yes, sir.

Q Have you ever, of those elements, combined the fingernail belt with the discharge

conveyor structure?

A No, sir.

Q In any manner?

A No, sir.

Q What magazines do you intend to place advertisements similar to that shown in Deposition Exhibit 17-B and -C?

A The Quick Frozen Foods International, Fishing Gazette, and the Fish Boat Magazine.

Q From your experience, do those magazines have only United States distribution, or do they have foreign distribution?

A No, as a matter of fact, the Quick Frozen Foods

International -- it is my understanding it is only distributed outside the United States. The Fishing Gazette and Fish Boat magazines go to most fishing countries of the world.

Q Of the contacts that have been discussed with you by Mr. Shoup previously, in reference to your affidavit concerning interest in other foreign countries, where, if you know, were those contacts derived from?

A The majority of the contacts have come from inquiries from foreign countries that received issues of the three magazines that I mentioned.

BY MR. PUGH:

Q One final point, Mr. Skrmetta: I hand you a copy of Deposition Exhibit 19, which I believe you identified as a handwritten text of at least part of what you cabled to Brazil on some date. When did you send that cable?

A Last night.

Q It states, "Machine complete tomorrow; will

telephone in afternoon." At the time you had written and sent that, what did you contemplate?

A I figured that we would have had the decision of Judge Rubin and that I would be calling the man and telling him we would be loading the machine on the dock Friday and start making preparations for them to receive it, and other plans that we have connected with it and other parts.

Q Did you submit any other invoice to the Brazilian Consulate in New Orleans other than that one?

A No, sir.

THE WITNESS:

I think I could help you on that question. The people tried to buy a deveiner from Laitram and had been refused the sale of one. I think that might explain it.

MR. PUGH:

On voir dire, what did you mean by "refused the sale of one"?

THE WITNESS:

I had seen a cable that said that Laitram had refused to sell Confrio a deveiner. That is the basic content of the notice I had, and I think the information, while it came from Confrio -- I think that is basically from Mr. Rubens Gasparian, because it was in response to a question that I had asked him. I asked him did Laitram offer to sell them a

deveiner. Having known that Laitram had refused to sell deveiners during a certain period, from a time when they did sell deveiners in foreign countries till a time during the time of the trial of this deveiner lawsuit, they had evidently refused to sell deveiners in foreign countries, and during this time was the time that Mr. Gasparian sought to buy a machine from us. 129

How do you know that, Mr. Skrmetta?

THE WITNESS:

The reason I know that is because beginning November 7, 1968, we began building the shrimp peeling machines that are the subject of the parts that are discussed in here, and this situation was long prior to that date.

MR. SHOUP:

One more question. Mr. Skrmetta, do you know to your knowledge if any of the elements utilized in either your slitter trough -- call it rocking slitter trough if you wish -- or your vein remover -- call it discharge conveyor if you wish -- are used for any other purpose than as pieces of those combinations?

THE WITNESS:

You mean the parts that we actually put into the unit, or parts like them?

MR. SHOUP:

I mean the basic parts of the combination that Mr. Pugh has been asking you questions about. I asked you about the blades. We will pass the blades over. Do you know of any other use for the inclined trough? Have those particular inclined troughs been used for any other -- any other

way -- in any commercial content? 151

THE WITNESS:

By us, no.

MR. SHOUP:

By anyone else?

THE WITNESS:

I don't know what anyone else has used.

MR. SHOUP:

What about the particular type of water supply header you utilize on the slitter? Is that utilized in any other form in any commercial content other than as a water supply header on your slitter trough?

THE WITNESS:

All over the world, they use water like that to flush shrimp down flumes, since time began.

MR. SHOUP:

With that particular type of water supply header?

THE WITNESS:

Yes.

MR. SHOUP:

With the holes spaced in that way?

THE WITNESS:

The spacing in the holes may not be different, but the actual conveying of shrimp in a trough -- that was done when I was a little boy -- done in a wooden --

MR. SHOUP:

I am talking about those particular water supply headers.

THE WITNESS:

We never made the same water supply header to do the other things. It is not the same, but we have made many other types of headers that wash shrimp down troughs of various types, and we have made them for three -- I am the third generation of having made them. My father made them before me, and his father before him.

MR. SHOUP:

How about the punched-lip endless belt on the discharge conveyor?

THE WITNESS:

The belt -- the punched-lip design originated in the early 1800's by

Harvey's of England, and we ourselves did not manufacture it until about 1965.

MR. SHOUP:

Is the punched-lip belt that is utilized in your machinery used for any other purpose in commercial content anywhere, to your knowledge?

THE WITNESS:

We don't use it for anything else.

MR. SHOUP:

Do you know of any other use for it -- that particular belt?

THE WITNESS:

We don't use it for anything else, and I am not at all aware of what anyone else uses it for it.

MR. SHOUP:

Do you know if anybody else used it at all?

THE WITNESS:

I don't know what anybody else has done with regard to that belt. I only know what we have done.

May 27, 1969

CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Attn: Mr. Roberto Gasparian

Dear Roberto:

Enclosed please find lawn mower brochures and a copy of a letter we wrote today in your behalf. If there is any reason why we cannot buy these people for export, we know that we can buy at a considerably discount on other make lawn mowers and export them to Brazil for you, provided there is no restriction by our government or your government.

It was indeed a pleasure to have you visit us, we look forward to a long friendship.

Please obtain the information on the prices of the Cleaner and Separator of Laitram, and all other equipment if possible. This information will be extremely helpful to us, especially if it their latest and most current prices.

My family sends regards to you and Daisy and your family as well. My son Eric feels that you and Daisy are very good special friends of his and I am grateful for the kindness shown him. With kindest personal regards, we remain

Yours very truly,

DEEPSOUTH PACKING CO.,INC.

Ray Skrmetta, President

SKRMETTA MACHINERY CORPORATION

~~Machinery - Parts - Service~~

INVOICE NO. 127 CUSTOMER'S ORDER DATE October 3, 19

SOLD TO: Companhia Nacion de Frigorificos - COMFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

SHIP TO:

DATE SHIPPED	SHIPPED BY	TERMS	F.O.B.	SHIPPED TO
		Net cash	New Orleans	Skrmetta

ONE	SKRMETTA SHRIMP DEVEINER machine, model SV470 Serial No. 1201 powered by a 1 H.P., 3 phase, 60 cycle 220/440 volt, totally enclosed Syncronear electric motor; complete with FEED CONVEYOR powered by a 1/3 H.P., 220 volt, 3 phase, 60 cycle electric motors; a DISCHARGE CONVEYOR powered by a 1/2 H.P., 220 volt, 3 phase, 60 cycle electric motor and a SKRMETTA JET WASHER.	
	At $ 13,250.00 each	$ 13,250

Export Crating extra, F.A.S. Steamer New Orleans.

SKRMETTA MACHINERY CORPORATION

Ray Skrmetta

Ray Skrmetta, President

Pagou Cr$ 6,00 (euro) ou $ 6,00
Tabela 33

31-10-1963

JOÃO PAULO DO RIO BRANCO
CONSUL GERAL

Consignee
71748

INVOICE

DEP Schutz 9

SKRMETTA MACHINERY CORPORATION

Machinery - Parts - Service

3536 LOWERLINE STREET
NEW ORLEANS, LA. 70125

INVOICE NO. 127 CUSTOMER'S ORDER DATE October 30, 1969

SOLD TO
Companhia Nacion de Frigorificos - CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

SHIPPED TO

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	SALESMAN	
		Net cash	New Orleans	Skrmetta	

ONE	SKRMETTA SHRIMP DEVEINER machine, model BV470 Serial No. 1201 powered by a 1 H.P.,3 phase, 60 cycle 220/440 volt, totally enclosed Syncrogear electric motor; complete with FEED CONVEYOR powered by a 1/3 H.P.,220 volt, 3 phase, 60 cycle electric motors; a DISCHARGE CONVEYOR powered by a 1/2 H.P., 220 volt, 3 phase, 60 cycle electric motor and a SKRMETTA JET WASHER.	
	At $ 13,250.00 each	$ 13,250.00
	Export Crating extra, F.A.S. Steamer New Orleans.	
	SKRMETTA MACHINERY CORPORATION	
	Ray Skrmetta, President	

DEPOSITION 10 A

INVOICE

invoice QUAD

SKRETTA MACHINERY CORPORATION

Machinery - Parts - Service

INVOICE NO. 127 CUSTOMER'S ORDER DATE December 22, 1969

SOLD TO: Companhia Nacion de Frigorificos - CNFRIO
Rua Serra de Bocaina, 194
Sao Paulo, Brazil

SHIPPED TO:

DATE SHIPPED	SHIPPED VIA	TERMS	F.O.B.	ALLOWANCE	
On Request	Steamer	Net Cash	New Orleans	Skretta	

ONE	PROFORMA SKRETTA SHRIMP DEVEINER Machine (Kit Form), model SM470 Serial No. 1201 powered by a 1 H.P., 3 phase, 60 cycle 220/440 volt, totally enclosed Syncrogear electric motors complete with FEED CONVEYOR powered by a 1/2 H.P., 220 volt, 3 phase, 60 cycle electric motors; a DISCHARGE CONVEYOR powered by a 1/2 H.P., 220 volt, 3 phase, 60 cycle electric motor and a SKRETTA JET WASHER. At $13,250.00 each Export Crating extra, F.A.S. Steamer New Orleans.	$13,250.00

DEP Exhibit 11

75748

INVOICE

confrio

Rua José Bonifácio, 178 - 10.º andar - PBX 89-0104 - 32-3171/2
Rua Serra da Bocaina, 104 - Tel.: 92-2171 - São Paulo
Rua Capitão Luiz Soares, 60 - Tels.: 2126-2271 - São Sebastião

São Paulo,
december 31, 1969.-

To
SKRMETTA MACHINERY CORP.
3536 Loserline Street
NEW ORLEANS, La. 70125

Gentlemen

We enclose herewith the import license of our order.

This license will be required by the time of delivery after fully legalized by the brazilian consulate.

Your Sincerelly

COMPANHIA NACIONAL DE FRIGORÍFICOS - CONFRIO

Director

P.S.- In case of maritime way, transportation must be, exclusively in brazilian flag ship.

Dep. Exhibit 12A

BANCO DO BRASIL S.A.

CARTEIRA DE COMERCIO EXTERIOR

LICENÇA DE IMPORTAÇÃO

IMPORTADOR: CIA. NACIONAL DE FERRO-LIGAS CONTRATO SOCIAL C.G.C. 71 039 119 INSC. 33-9013 ENDEREÇO: Rua José Bonifacio, 176-10º andar - SP.		PORTO DE DESEMBARAÇO: SANTOS
CONSIGNATÁRIO: O mesmo ENDEREÇO:	PORTO DE ORIGEM: U.S.A.	PORTO DE PROCEDÊNCIA: U.S.A.
APLICAÇÃO DA MERCADORIA: Para uso próprio	ALFANDEGA: Geral	EQUIVALENTE EM MOEDA NACIONAL: Cr$ 81.807,00

QUANTIDADE	DISCRIMINAÇÃO DA MERCADORIA CLASSIFICAÇÃO TARIFARIA: Ex. 73.008	PESO LIQUIDO EM KGS	PREÇO F.O.B. EM MOEDA ESTRANGEIRA UNITÁRIO	TOTAL
1	Uma máquina automática completa, para dobrar caixotes, com regulagem para caixas pequenas e grandes "PRETENDE O IMPORTADOR BENEFICIAR-SE DOS FAVORES PREVISTOS NO DECRETO-LEI Nº 221 DE 28-2-67- SUDENE, SEGUNDO O QUAL A PRESENTE IMPORTAÇÃO PODERÁ TER O SEGUINTE BENEFICIO: ISENÇÃO TOTAL DE IMPOSTOS E TAXAS".-	1.450	US$ 13.250,00	US$ 13.250,00
	VALOR C.I.F./REF. ESTIMADO, POR EXTENSO: QUATORZE MIL E SETECENTOS DOLLARS.-=-=-=-=-	TOTAL KGS 1.450	TOTAL U. S. $	13.250,00
			VALOR ESTIMADO - FRETE E SEG.	1.450,00
1			VALOR C.I.F./REF. ESTIMADO	14.700,00

"Se por via marítima, o transporte deverá ser obrigatoriamente, em navio da bandeira brasileira."

Atestamos a não existência de similar nacional para o(s) mencionado(s) constante(s) [illegible]

A CARTEIRA DE COMERCIO EXTERIOR do BANCO DO BRASIL S.A. concede, para a importação da mercadoria acima descrita, a presente

Licença DC-69/12566-15023 Validade 10 junho 1970

Rio de Janeiro, 10 de dezembro de 69.

CARTEIRA DE COMERCIO EXTERIOR

Francisco [illegible]

Chefe da Fiscalização

Para apresentação, pelo exportador, à autoridade consular competente para a legalização dos documentos de embarque.

DEP Exhibit 12B

DEP EX 12A

BANCO DO BRASIL S. A.
CARTEIRA DE COMÉRCIO EXTERIOR — **ANEXO DA LICENÇA DE IMPORTAÇÃO N.º** DG-69/12566

MERCADORIA				Preço F.O.B. em moeda estrangeira	
Item da tarifa	Peso líquido em Kg	Quantidade	DISCRIMINAÇÃO	Unitário	Total
	1.450	1	Uma máquina automatica completa, para descascar camarões, com regulagem para tamanhos pequenos a grandes, "Skrusetta" modelo BV 470 serie 1201 com motor elétrico "Syncrogear" de 1 HP 3 fases, 60 ciclos 220/440 volts completamente fechado; esteira de alimentação com motor elétrico de 1/3 de HP 220/440 volts, 60 ciclos, esteira de descarga - com motor eletrico de 1/2 HP 220/440, volts, 60 ciclos, e lavador a jato de agua.	US$ 13.250,00	13.250,00
Pôrto de descarga	1.450	1		◄ TOTAIS ►	13.250,00
SANTOS	Observações			VALOR ESTIMADO DO FRETE E SEGURO	1.450,00
				VALOR C. I. F.	14.700,00

DEP Exhibit 12C

COMPANHIA NACIONAL DE FRIGORIFICOS COMFRIO
NOME DO EXPORTADOR E NÁCIONALIDADE

Para apresentação, pelo exportador, à autoridade consular competente para a legalização dos documentos de embarque

Mod. 34/61 - II

Para uso da CACEX

_____ de _____ de 19__

CARTEIRA DE COMÉRCIO EXTERIOR

FirstWestern Bank

☒ 648 SOUTH SPRING STREET
LOS ANGELES, CALIFORNIA 90013

☐ 235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104

DATE January 19, 1970

MAIL TO

SER METTA MACHINERY CORP.
3536 Lowerline Street
New Orleans, La. 70125

THIS REFERS TO OUR LETTER DATED JANUARY 5, 1970

RE:

CORRESPONDENT'S L/C NO.	AMOUNT	OUR REFERENCE
CD-EP-70/002	US$14,700.00	4043

OUR REFERENCE NUMBER MUST BE MENTIONED ON ALL DRAFTS AND COMMUNICATIONS RELATIVE THERETO.

(YOUR CORRESPONDENT)

BANCO DE CREDITO NACIONAL S.A., SAO PAULO, BRAZIL

GENTLEMEN:

PLEASE BE GUIDED BY THE CLAUSES INDICATED BY "X"

☒ AT THE REQUEST OF OUR CORRESPONDENT INDICATED ABOVE, WE ARE ENCLOSING THEIR LETTER OF CREDIT ESTABLISHED IN YOUR FAVOR. IT IS REQUESTED THAT YOU PRESENT ONE ADDITIONAL COPY OF THE COMMERCIAL INVOICE.

☐ AT THE REQUEST OF OUR CORRESPONDENT INDICATED ABOVE, WE ARE ENCLOSING AMENDMENT TO THEIR LETTER OF CREDIT ESTABLISHED IN YOUR FAVOR.

☐ WE ARE IN RECEIPT OF A CABLE/WIRE FROM OUR CORRESPONDENT INDICATED ABOVE WHICH READS AS FOLLOWS:

WE CONFIRM THIS CREDIT AND THEREBY UNDERTAKE THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED BY US.

☐ PLEASE NOTE THAT THE ABOVE IS GIVEN TO YOU IN ACCORDANCE WITH INSTRUCTIONS OF THE ABOVE MENTIONED CORRESPONDENT AND CONVEYS NO ENGAGEMENT BY US.

YOURS VERY TRULY,

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1962 REVISION)", INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 222.

DEP EX 13A

FORM 1044

BCN BANCO DE CRÉDITO NACIONAL s.a.

JJH/? São Paulo, January 5, 1970.

CONFIRMATION OF CABLE

(ADVISING BANK)
FIRST WESTERN BANK AND TRUST CO.
LOS ANGELES - U.S.A.

To
SIEMSTTA MACHINERY CORP.
3536 Loverline St.
NEW ORLEANS LA. 70125 - U.S.A.

Gentlemen:
CONFIRMING OUR TODAY'S CABLE THROUGH THE ABOVE NAMED BANK
WE HEREBY ESTABLISH IN YOUR FAVOUR OUR IRREVOCABLE
CREDIT Nº CD-SP-70/002
for ACCOUNT of COMPANHIA NACIONAL DE FRIGORIFICOS - CONFRIO
Rua José Bonifácio,175-10ºandar - São Paulo
AMOUNT US$ 14,700.00 CIF (in words: fourteen thousand seven hundred U.S. dollars.)
VALIDITY for negotiation: May 30, 1970 for shipment: May 15, 1970
Country of origin of merchandise: U.S.A.
PORT of shipment: any U.S.A. seaport PORT of destination: Santos Seaport
Partial shipments prohibited. Transhipment(*) prohibited.
Available by:
Draft at sight in duplicate for 100% of commercial invoice value.
accompanied by:

a) Full set of «clean» on board Bills of Lading, proving receipt of goods on board (in case of Air Bills, also date of departure and prefix of airplane) stating FREIGHT PREPAID (written in cipher and at full length) issued to order of BANCO DE CREDITO NACIONAL S/A.-Notify: Companhia Nacional de Frigoríficos - Confrio

Commercial invoice in triplicate, original of which legalized and 2nd and 3rd copies visaed by the Brazilian Consul in U.S.A.,
and visaed by the Chamber of Commerce of U.S.A.
containing complete description of goods and your declaration that goods are in accord with specification on the relative import permit and addendum thereto (if any); also stating the FOB value, ocean/air freight and insurance premium as separate items

c) Insurance policy or certificate, covering marine/air risks and all risks of loss or physical damages originated from any external causes, including war risks, strikes and civil commotions, including warehouse clause ... days after discharge, for the CIF/~~CRT~~ invoice value plus issued to order of BANCO DE CREDITO NACIONAL S/A.

(*) In case of transhipment allowed and effected, or when direct shipment is impossible, the following documents are further required: a) Certificate of origin issued in the country of produce of goods, visaed by the local Chamber of Commerce and legalized by the Brazilian Consul in

b) copy of bill of lading, duly authenticated by the respective forwarding company, proving transport of goods from country of origin to port of transhipment, or from where direct shipment to Brazil will have been effected, or DG/

All documents must show Import Licence nº 69/12566-15023 and annex and evidence shipment of:- UMA MAQUINA AUTOMATICA COMPLETA, PARA DOBRAR CAIXÕES COM REGULAGEM PARA TAMANHOS PEQUENOS E GRANDES - "KIT FOBS", according to Import Licence and annex above.
Net weight:- 1,450 Kgs
Remarks:- Shipment must be made by vessel of Brazilian flag.
NOTICE:- According to decree nº 60167 of August 2nd, 1967 consular fees are payable at port of destination by importers, and therefore they will not be reimbursed under this credit.

The advising Bank, or their designated Offices or Agents, is/are hereby authorized to effect such payment(s) in accordance with our today's instructions to them on a separate letter, provided all terms and conditions of this Credit have been complied with.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1962 Revised) International Chamber of Commerce Brochure Nº 222.

Yours very truly
BANCO DE CRÉDITO NACIONAL S.A.

DEP EXH. 13B

ORIGINAL

BANCO DE CRÉDITO NACIONAL s.a.

[illegible] São Paulo, January 5, 1970.

CONFIRMATION OF CABLE

To —
FIRST WESTERN BANK AND TRUST CO.
LOS ANGELES - U.S.A.

(BENEFICIARY)
SUNSETA INCORPORT CORP.
3595 Lewellen St.
NEW ORLEANS 14, TEXAS - U.S.A.

Gentlemen:
CONFIRMING OUR TODAY'S CABLE THROUGH THE ABOVE NAMED BANK
WE HEREBY ESTABLISH IN YOUR FAVOUR OUR IRREVOCABLE
CREDIT Nº [illegible]
for ACCOUNT of COMPANHIA NACIONAL DE FERTILIZANTES - CENFERT
[illegible]
AMOUNT US$ 14,200.00 (US$ [illegible] Dollars)
VALIDITY for negotiation May 30, 1970 for shipment May 15, 1970
Country of origin of merchandise U.S.A.
PORT of shipment any U.S.A. ship port PORT of destination Santos, Brazil
Partial shipments prohibited.
Against by
Draft at sight to be drawn for 100% of commercial invoice value.
accompanied by:

[illegible]

COPY TO ADVISING BANK

[illegible]

[illegible]

[illegible]

360

December 22, 1969

Companhia Nacion de Frigorificos - CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Att: Mr. Roberto Cesperian

Dear Roberto:

Enclosed is a copy of a letter written to Rio today that is self explanatory.

We are grateful for your telephone call and for the opportunity to talk with you and your brother last week.

We were quite shocked at your report that a Laitram Corporation representative called on you and that in the conversation the representative informed you that our Marantha Shrimp Deveiner Machine would not devein shrimp that had been peeled on a Laitram Peeler and that it would not work in connection with this type machinery. As explained to you and your brother on the telephone, this just absolutely is not true.

As we advised you over the telephone, we guarantee that our machine will work better than Laitram deveiner, we have a better cut and less shreading of the outer skin, resulting in a better color and a better yield, which is seriously to be considered. We also can devein shrimp from the species of shrimp that have the vein near the center of the shrimp.

As we have advised you previously, and again over the telephone, we are involved in a Patent Infringement suit in the United States District Court at New Orleans which was brought against Deepsouth Packing Co.,Inc. by the Laitram Corporation of New Orleans. The suit was based on 15 claims of their two deveiner patents, supposedly covering two parts of our three part deveiner. The three parts being the slitter, the jet washer and the discharge conveyor. The Judge ruled against Laitram on 13 of the 15 claims but did uphold them on 2 claims, one in each patent. As you know, we are appealing to the Court of Appeals on the latter portion of the Judge's decision.

However in Brazil, Laitram failed to get two patents and only obtained one, namely Brazil Patent No. 54,882, on their slitter. Thus in Brazil there cannot possibly be any problem on the jet washer and discharge conveyor portions of our deveiner, but only possibly with the slitter portion. However, at the very least, a non-exclusive license under Laitram's Brazilian patent can be obtained from the Ministry of Industry and Commerce because Laitram failed to work their patent as required by the laws of Brazil. Thus, there should be no real legal problem involved with the use of our deveiner. Other points are covered in the attached copy of a letter to Valenca of Rio.

(cont'd)

DEP Exhibit 15 Page

We want you to please contact Valence in our behalf and ask that he please give our request quick handling.

We want to assure you of the following:

a. That the Latham representative was in error about our machine not being able to be used in connection with Latham machinery you have previously purchased.

b. We guarantee up to the full purchase price that our dewiner when completed and installed in Brazil will be as we have described to you personally and in writing.

c. We will not violate the trust you have in us.

We are submitting to the United States District Court at New Orleans our plan for marketing machines to make sure that we have no legal complication in the United States and supplying your order will be contingent upon a favorable ruling by the Judge.

We want to thank you for your telephone call and for the faith and trust you have placed in us. We also appreciate your order for one Shrimp Deveiner in kit form to be completed in Brazil on arrival.

We wish you and yours a very Merry Christmas and a Happy and Prosperous New Year, we remain

Yours very truly,

BERNETTA MACHINERY CORPORATION

Ray Bernetta, President

DEP Exh. 15 P.2

T. T. T.

H. A. GOGARTY, INC.

DELIVERING CARRIER TO STEAMER: DRAY DELIVERY

CAR NUMBER—REFERENCE:

FORWARDING AGENT - REFERENCES: H. A. GOGARTY, INC. REF: 37878

EXPORT DEC. NO.: 2214

DELIVERY ORDER

SHIPPER: SXRMETTA MACHINERY CORP.

[redacted]

SHIP	FLAG	PIER	PORT OF LOADING
ALMIRANTE GRACE ARANHA			NO

PORT OF DISCHARGE FROM SHIP: SANTOS

DESTINATION OF GOODS (If in-bond goods are to be forwarded from port of discharge (See clause 11))

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	CUBIC MEAS. OR KIND	GROSS WEIGHT IN POUNDS
COMPANHIA WACION DE FRIGORIFICOS SAO PAULO, BRAZIL VIA SANTOS	3	BOXES MACHINERY MEAS TO FOLLOW		APPROX. 3,500 #

FEB 12 0
PO YDRAS ST WHARF
SECT 43 TO 58
TRACK 3 OR 4
TEXAS TRANSPORT & TERMINAL CO. INC.

SKRMETTA MACHINERY CORPORATION

Machinery - Parts - Service

3636 LOWERLINE STREET
NEW ORLEANS, LA. 70125

December 17, 1969

C. Emmett Pugh, Attorney
500 Saint Peters St.
New Orleans, La.

Dear Emmett:

Enclosed is a copy of a letter from Quick Frozen Foods with a proposed rough layout of an ad we will run with them. Please note that where the Skrmetta Automatic Shrimp Deveiner is mentioned that a note in parenthesis (not all models available for sale in the United States) is to be included. We would like very much for you to submit this ad to Judge Rubin, for approval, we do want to be sure that we have nothing in violation of the Judge's order.

We thank you for your cooperation and with best wishes, we remain

Yours very truly,

SKRMETTA MACHINERY CORPORATION

Ray Skrmetta, President

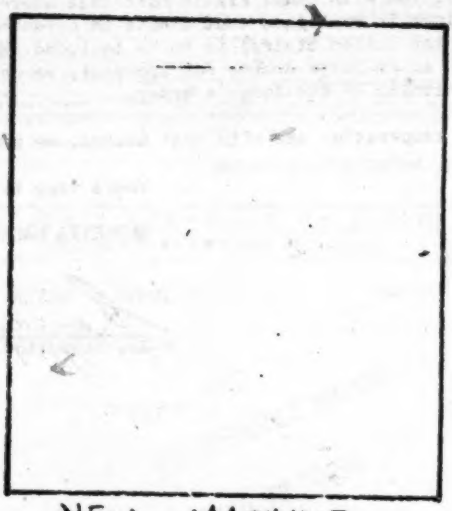
C. EMMETT PUGH
Attorney-At-Law
RECEIVED
DEC 18 1969
By

SKRMETTA

SHRIMP

PEELING

MACHINES



NEW MACHINE

Comb

AVAILABLE NOW

Other Machines

- Model Sk-PCM
- Skrmetta Shr
- Skrmetta Autom
- Sk
- other

PERFORMANCE - ECONOMY - DEPENDABILITY

Service and change parts are available for Skrmetta manufactured machines and other competitive machines.

For complete information, write or phone Ray Skrmetta

SKRMETTA MACHINERY CORPORATION

3536 LOWERLINE STREET NEW ORLEANS, LA. 70125 USA TEL. 504/488-4413

S K R M E T T A

SHRIMP PEELING MACHINES

NEW MACHINE

Combination Cleaner-Separator

Available Now

Other Machines Available:

• Model SK-PCAA (same as SKA) has change parts to convert to peel precooked shrimp • Skrmetta Shrimp Peeler, Junior, Model 101-B • Skrmetta Automatic Shrimp Deveiner Machines (not all models available for sale in the United States) • Skrmetta Automatic Shrimp Blancher • Other machinery used in shrimp processing plants •

PERFORMANCE - ECONOMY - DEPENDABILITY

Service & Change Parts are available for SKRMETTA manufactured machines & other competitive machines.

For complete information write or phone Ray Skrmetta

SKRMETTA MACHINERY COPORATION

3536 Lowerline Street, New Orleans, La. 70125, U.S.A.

Phone: (504) 488-4413

Dep. Ex 17C

November 18, 1969

CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Att: Mr. Roberto Gasparian

Dear Roberto:

I made a two day trip to Texas looking for a man to work for you in accordance with your telephone request, the answer was the same down there as it was in this area, no one that can really fit your requirements is available.

In drawing on our experience, we firmly believe that your best and most economical consideration should be given to our sending a man down for two weeks to teach at least two (or more) of your men in the operation of the shrimp peeler, cleaner, separator and deveiner and etc. We think that in less than two weeks your men could learn all about these machines and how to operate them efficiently in peeling all types of shrimp. We can also go over your whole shrimp operations with an expert eye and most probably could save you many times more money than the cost of the trip and expenses. Suggestions to help you in your overall operations will be offered only in your request and only to you personally, or to someone you designate.

We want to assure you that we have full confidence we can teach your people in this short time and that this will be your very best move. We would send our General Manager, Tony Barhanovich, to do this job for you. If you desire to have his service, you will be expected to furnish roundtrip transportation via economy airfare and take care of the expenses of food and lodging during the two weeks. Tony's rate of pay is $1500.00 per month and we would expect you to pay him in U.S. funds equivalent to 1/2 monthly pay of $750.00 in U.S. funds.

In the alternative, if you do not need anyone until the latter part of January, provided you will accept a one week training period, I will be pleased to perform this service for you on the same basis, with the exception that I will make no charge for my time. Unfortunately, I cannot spend more than one week away from my family and business, but I really believe that in working long hours with good men, the entire purpose could be achieved in one week.

We thank you for your cooperation and with kindest personal regards to you, Daisy and the entire family, we remain

Yours very truly,

SKRMETTA MACHINERY CORPORATION

Ray Skrmetta, President

DEP. Exh. 15

CONTRIO

MACHINE COMPLETE

TOMORROW WILL TELEPHONE

IN AFTERNOON REGARDS

T DEPACO

(IIII)

DEP Exhibit 19.

CHASE METALS SERVICE

LOCAL STOCKS: ALUMINUM · BRASS · COPPER · STAINLESS

1000 So. Jefferson Davis Pkwy., P.O. Box 13278 Tel. 486-5441
New Orleans, La. 70125

FIRST WESTERN BANK
AND TRUST COMPANY
INTERNATIONAL BANKING DEPARTMENT
548 South Spring Street • Los Angeles, California 90013, U.S.A. • Telephone (213) 629-4381

January 5, 1970

S.K.R. Metta Machinery Corporation
3536 Lowerline Street
New Orleans, La. 70125

Gentlemen:

We have received a cable from Banco de Crédito Nacional, S.A., Sao Paulo, Brazil, that reads as follows:

"WE OPEN IRREVOCABLE CONFIRMED DOCUMENTARY CREDIT CDSP 70/002 FAVOUR SKRMETTA MACHINERY CORPORATION 3536 LOWERLINE ST NEW ORLEANS LA 70125 ORDER CIA NACIONAL FRIGORIFICOS SAOPAULO USDOLLARS 14,700.00 CIF VALIDITY SHIPMENT MAY 15 NEGOTIATION MAY 30 1970 STOP ADVISE BENEFICIARY AIRMAILING DETAILS".

Please note that the above is given to you in accordance with instructions of the above mentioned correspondent and conveys no engagement on our part.

Upon receipt of the written confirmation, we will advise you accordingly.

Very truly yours,

Carlos Sena
Operations Officer

gml

DEP. Exhibit 20

December 22, 1969

Edson Cavalcanti Valenca, Advogado
Rua Sao Clemente 127-801-A
Rio de Janeiro, Brazil

Dear Mr. Valenca:

We obtained your name from a friend that told us you were knowledgeable in Patents in Brazil.

We are manufacturers of Shrimp Processing Machinery. One of our Machine is a Shrimp Deveiner Machine, similar to that shown in figures 1-4 (rocking embodiment) of U.S. Patent 3,031,714 copy attached. We use no "water spray - directed upon the shrimp" as shown in Fig. 1 of U.S. Patent 2,694,218.

We are involved as a defendant in a Patent Infringement Suit in the United States District Court at New Orleans and have recently had a decision that our machine did not directly infringe nor did it literally infringe any claim of U.S. Patent 2,694,218 copy attached. The Court however did rule that by the Doctrine of Equivalent we infringed Claim 3. We seriously disagree with this and the matter is before the United States Fifth Circuit Court of Appeals and we expect an ultimate decision in our favor.

A Patent was granted by the Ministry of Industry and Commerce of Brazil, Patent No. 54,882 apparently based on U.S. Patent 2,694,218 copy attached. It is noted that in Article 39 of your Code that the Ministry of Industry and Commerce in Brazil will grant a nonexclusive license on request if the patent has not been worked in Brazil. We sincerely believe that this is the case in Brazil, according to the Brazilian law, in Brazil Patent No. 54,882 and we want you to immediately do the following:

1. Advise us first of your complete charge for the service we are requesting.
2. Secure a copy of the Brazil Patent No. 54,882.
3. Advise us on the fact that if we sell a machine for use in Brazil similar to that of Figures 1-4 of our '714 patent, will it infringe Brazil Patent No. 54,882, based on Claim 3 of U.S. Patent 2,694,218?
4. Advise whether Brazil Patent No. 54,882 is or may be invalid in Brazil because of non compliance with some other regulation in Brazil, ie, non-payment of taxes, etc.
5. If Brazil Patent No. 54,882 will present a problem to us, please obtain a non-exclusive license on Brazil Patent No. 54,882 based on the fact that the patent was not worked in Brazil within the required 3 years, and, as matter of fact, until this date it has not been worked in accordance with the laws of Brazil, or, alternatively, file a petition to cancel the patent

(cont'd) DEP Ex. 21

for non working under article 60 of your code.

We need a very prompt reply from you in this matter and on receipt of this letter please send us a collect cable that would let us know you received this letter and that you will comply with our request. Your cable should be addressed as follows:

DEPACO New Orleans

RECEIVED AND COMPLYING
Valenca

We thank you for your cooperation and wish you and yours a very Merry Christmas and a Happy and Prosperous New Year, we remain

Yours very truly,

DEEPSOUTH PACKING CO.,INC.

Ray Skrmetta, President

SALE OF MACHINE WITHOUT FULL COMPLIMENT OF ROLLERS:

Sale of "Peeling Machines" without the full compliment of rollers installed therein under the explicit condition that final assembly will not be made until after November 6, 1968;

It is well established that infringement of a combination patent occurred only through a combination comprising every one of its elements or a mechanical equivalent. Roswell v. Lindsay, (1895), 113 U.S. 97, 5 S. Ct. 507; Cimiotti Unhairing Co. v. American Fur Refining Co. (1905) 198 U.S. 399, 410, 25 S. Ct. 697; I.T. S. Rubber Co. v. Essex Rubber Co., (1926), 272 U.S. 429, 444, 47 S. Ct. 136; Leaktophone Corp. v. Rola Company, (1930), 282 U.S. 168; Walker on Patent (Deller's' Ed.) sec., 461, p. 1697. Thus the "machine" you would be selling, without the rollers as particularly recited in all of the claims of U.S. Patent 2,574,044, would not infringe that patent.

An analogous situation to your proposed program is found in the case of RCA v. Andrea, (CCA-a, 1935) 79 F.2d 626, wherein a U.S. manufacturer was selling a radio in "kit form". The radio was complete except that the tubes, although packaged in the same container, were not placed in their sockets. The radios were sold for final assembly abroad, that is, outside the territorial U.S. The Court held that there was no direct or contributory infringement of the patent which claimed a combination including the tubes because the patent grant only covered the territorial U.S. The same principles would apply to your situation because the final assembly, being after the expiration date of the patent, namely, after November 6, 1968 is outside of the patent grant.

Although the rule of RCA v. Andrea came under some question in a later decision at 90 F2d 612, the rule was clarified in Cold Metal Process Co. v United Engineering & Foundry Co. (CA-3,1956), 235 F2d 224, 230, and in Hewitt-Robins, Inc. v. Link Belt Co., DC-Ill. 1966), 148 U.S.P.Q. 530, 531 and in the same case being affirmed at 371 F2d 225,229 et seq.,151 U.S.P.Q. 670,674 (CA-7 1966).

DEP. EX 22

The code at Title 35, article 371(a) defines direct infringement by "...whoever without authority makes, uses or sells any patented invention, within in the United States during the term of the patent therefor, infringes the patent. (Emphasis added). Ofcourse, there can be no contributory infringement in absence of direct infringement. Aro Mfg. Co. v Convertible Top Replacement Co.(1961) 365 U.S. 890,81 F. Ct. 599; Cold Metal Process Co. case, supra.

As the claims measure a patentee's invention, the basic claims of U.S. Patent 2,574,044 are set out below:

Claim 1. In a shrimp peeling machine, a unit arrangement of three axially inclined oscillating rollers with two of the rollers spaced apart and with the third roller disposed below such space and forming crotches with the spaced rollers, the assembly thus forming a channel to which raw shrimp may be fed for peeling.

Claim 2. In a Shrimp peeling machine, a unit arrangement of two rollers with their axes inclined and a crotch between the rollers adapted to peel shrimp, and means for oscillating said rollers.

Claim 12. An improved shrimp peeling machine comprising upper and lower rollers arranged on an axial inclination and having a channel therebetween, means for oscillating said rollers, means for supplying water to the channels at the upper portion thereof, means for receiving the peeled meat from the lower end portions of the channels, a drain pan below the rollers for receiving the hulls, said drain pan having a hull outlet.

PHONE
488-6413

DEEPSOUTH *Packing Company, Inc.*

—PACKERS OF—

FRESH CANNED AND FROZEN FOODS

3336 LOWERLINE STREET
NEW ORLEANS, LA. 70125

September 15, 1969

C. Emmett Pugh, Attorney
500 St. Peters St.
New Orleans, La.

Dear Emmett:

On your proposed letter to Louis Claverie dated September 16, please remove the word "Skrmetta" and replace with "Deepsouth" on the second to last line of the first page; and add "by my client". to the first line of the second page. We could then live with your reply to Mr. Claverie.

We thank you, and remain

Yours very truly,

DEEPSOUTH PACKING CO., INC.

Ray Skrmetta, President

C. EMMETT PUGH
Attorney-At-Law
RECEIVED
SEP 16 1969
BY:

MEMBER
NATIONAL CANNERS ASSOCIATION

DEP Exhibit 23 A

16 September, 1969

Send any reply to
New Orleans Office

Louis B. Claverie, Esquire
Phelps, Dunbar, Marks, Claverie & Sims
Hibernal Bank Building
New Orleans, Louisiana 70112

Re: Laitram Corporation vs. Deepsouth Packing Co., Inc.

Dear Mr. Claverie:

I have delayed responding to your rather inaccurate letter of 28 July, 1969, because I did not wish to jeopardize any possibility of a reasonable settlement of the lawsuit. However, since settlement of this matter is apparently not possible, in response to your letter, I would like to inform you of the following:

1) You stated that, because of the information your side provided, we "now know the countries your client has patent protection in" on its slitter trough and vein remover. That's the whole point, Mr. Claverie, we don't know in which foreign countries your client has patent protection. All we have is a list of some 36 countries and 41 patents and an indication that five of those patents have expired. Your Mr. Gordon has emphatically indicated that the list, even as "corrected" should not be considered "a representation of the actual current legal status" of the foreign patents but was "merely reflective of information in Laitram files" (emphasis added).

2) In your letter you infer that my client has been interferring with your Panamanian patent rights. Heretofore, you have never affirmatively stated that you had any present existing rights in Panama but merely that patent rights had been secured in the past. Secondly and most important, negotiations for any Shrimella equipment in South America have never been contemplated for use in Panama and hence no rights of Laitram in Panama, such as they might

No. 23B

COPY

be, could have been infringed.

3) You further state that an offer was made in violation of Judge Rubin's injunction. However, I am sure, knowing the litigous nature of your client, if you truly thought there had been any possible hope of establishing a violation, you would be asking for contempt proceedings.

The facts are that any develning equipment manufactured or sold by our client in the U.S. for foreign customers will not be an infringement of the U. S. Latiram patents, and hence not a violation of the injunction. As I am sure your patent counsel is well aware, parts of an apparatus covered by a U.S. patent can be manufactured and sold unassembled to foreign customers for assembly and use abroad without infringement of a U. S. patent. If counsel has not already brought the cases to your notice, your attention is directed to RCA v. Andrea (CCA -, 1935), 79 F 2n 625; Cold Metal Process Co. v United Engineering & Tvesuary Co. (CA-3, 1956), 235 F2d 224, 230; and Hewill-Robbins Inc. v. Link Belt Co. (D.C. Ill., 1966), 148 U. S. P.Q. 530, 531, affirmed 371 F2d 225, 229 (CA-7, 1966).

You further infer that my client acted improperly because of the installation of a Sirmetia machine in Texas after issuance of Judge Rubin's Findings of Facts. However, the sale of the machine and my client's legal obligation to provide such a machine was completed prior to such issuance and prior to any knowledge on our part as to definitely what Judge Rubin's final decision would be.

In short in your letter of July 28, I believe you have attempted to raise a smoke to hide the fact your client does not want the exact scope of its legal rights known, hoping to thus effectively expand them by fear or to draw the unwary into further litigation. Just as your client refused to state its position in 1964 as to possible patent infringement, now it is following that rather lackluster precedent and again refuses to cooperate. Perhaps the "black boot" of your monopolist client needs "shining." Just as Judge Rubin felt that the 1964 activities of your client were improper in light of the history of our client's.

Need I point out again that at one time you were willing to avail the files to us and there is no valid and proper reason for them not to be available now.

I again respectfully request inspection of your client's foreign patent files so we may properly determine the scope of your client's rights.

NO. 23C

C O P Y

3.

I remain,

Yours very truly,

C. Emmett Pugh

DEP/dss

cc; The Honorable Alvin B. Rubin

23D

January 19, 1970

Companhia Nacion de Frigorificos - CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Att: Mr. Roberto Gasparian

Dear Roberto:

We acknowledge receipt of your order, a notice of the Letter of Credit from the bank, but not the actual Letter of Credit as yet. Just as soon as we receive the Letter of Credit in our hand, we will begin making plans to meet the shipping conditions stated.

At this time, it appears as if February 28 will be the earliest possible shipping date by a Brazilian Flag vessel. We do not believe that we can make the February 4 shipping date, which is the earlientdate prior to February 28. We hope that this shipping schedule will meet with your approval.

We will write you further next week giving you further particular on the approximate arrival time of the shipment in Brazil and the writer's approximate schedule for arrival in Brazil for installation of the deveiner. Ofcourse, all of this will be subject to your approval.

When you need the services promised you on the peeling machines, we will be pleased to do as you requested. However, if it can all be done together on one trip, it will be extremely good.

With kindest personal regards to you and Daisy and your family, we remain

Yours very truly,

SKINNETTA MACHINERY CORPORATION

Ray Skinnetta, President

DEPOSIT. EX 24

confrio

Rua José Bonifácio, 178 - 10.º andar - PBX 33-0104 - 32-2171/2
Rua Serra da Bocaina, 194 - Tel.: 93-2171 - São Paulo
Rua Capitão Luiz Soares, 60 - Tels.: 2120-3271 - São Sebastião

São Paulo,
January 19, 1970.-

To
SHIMETTA MACHINERY CORP.
3536 Lowerline Street
NEW ORLEANS: La. 70125

Dear Ray

I thank you for your letter dated december 22nd.

Regarding the same subject, some unknown people has airmaild to us the enclosed sheet of magazine.

We dont know who did it neither what was the purpose of the sender.

Id didnt affect me at all nevertheless, just for your guindance, I'm forwarding it to you. In fact I'm sure that you will act in such way that our organization will be never involved in trouble.

On the other hand but regarding the same subject our engineers have lay-outed the enclosed lay-out. They want to know the size of the feeding points of water as well its pression and speed of empty.

They also want to know the needing of eletricity as well the points where the product get in and come out.

If you cant determine our requires based on the enclosed lay-out, please be kind as to draw another aly-out but considering the same area we have scheduled. Also indicate the reasons why our lay-out couldnt be used.

Looking forward to hear from you I remain

Yours

COMPANHIA NACIONAL DE FRIGORIFICOS - CONFRIO

DIRETOR

RUBENS

DEP. #25

companhia nacional de frigorificos "confrio"

January 28, 1970

Companhia Nacion de Frigorificos - COMFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Att: Mr. Rubens Gasparian

Dear Rubens:

In reply to your letter of January 19, we appreciate your forwarding the notice you received in the mail about the lawsuit in the United States on our Deveiner. We feel that we have discussed this with you on the telephone and that no further written discussion is necessary. We do appreciate your confidence and we will do everything we told you we would do.

Regarding the drawing of your plant layout, we will furnish you a drawing next week of how our deveiner can fit into your line. At this time it appears as if there will be no difficulty whatever in fitting our machinery into your line.

Enclosed please find copies of a recent letter written to Roberto and copy of our letter to Valenca in Rio. We sent both copies because you might not have received them. We do not have Valenca's phone number, but he was easily reached by phone.

We expect a reply from Valenca by Monday of next week and we will furnish you a complete copy of his report for your use. We do appreciate your contacting Valenca and working with us in this matter.

It has been a pleasure to talk with you on the telephone and to work with you, we look forward to a long friendly relationship. With kindest personal regards to all, we remain

Yours very truly,

SKINNETTA MACHINERY CORPORATION

Ray Skinnetta, President

DEP EX 26

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

(03)NSB525 KA614
K CDJ109 VIA ITT AWM081 VIA ITT BUI674 224392
UINX HL BGSO 017
SAOPAULO 17 30 1923

DUPLICATE OF TELEPHONED TELEGRAM
1923 DEC 30 PM 10 38

LT
DEEPSOUTH
PACKING COMPANY Po Box 13145
NEWORLEANSLO
PAID FOR PEELER 39000 FOR CLEANER SEPARATOR GRADER 12000 WARMEST
REGARDS
ROBERTO
COLL 39000 12000

MNN

Sent 27.2

CW Date
Rec'd 498 4413
Ray
Ck'd 435a to Mail
GD

Exh 2-7-3

June 3, 1969

Mr. Roberto Gasparian
Al. Gabriel Monteiro De Silva, 2407
San Paulo, Brazil

Dear Roberto:

We thank you for your cable that informed us you paid $39,000.00 for your peeler and $12,000.00 for the Cleaner, Separator and Grader. We really need the break down on the Cleaner and Separator prices and would appreciate knowing the specific prices of these two machines. A copy of the invoice would be helpful.

We do not remember the exact date, but it is almost one year ago that Laitram reduced the price on the peeling machines from $39,000.00 to $29,000.00. We do believe that if our recollection is correct, that you indicated the delivery of the machine was tied up due to the recent Dock strike in the United States. Assuming that this is correct, we believe that Laitram Corporation overcharged you $10,000.00 on the shrimp peeling machine and we feel that you have a ligitimate claim against them for this amount. We suggest that you look into this matter.

We have written you a letter which you have not had an opportunity to reply to as yet, but we would appreciate hearing from you at your next convenience.

We thank you for your cooperation and with kindest personal regards, we remain

Yours very truly,

DEEPSOUTH PACKING CO., INC.

Ray Simonis, President

GWJ

SHERATON CHARLES
407
Roberto Gasparian

AL. GABRIEL MONTEIRO DA SILVA, 2407 — 80-0000

ROBERTO GASPARIAN
CONFREO
JOSE
SAN PAULO, BRAZIL

Sheraton Charles

Ex. 174

MANUFACTURING COMPANY

TELEPHONE (AREA CODE 414) 637-6711
CABLE ADDRESS: JAYCO, RACINE, WIS.

1721 PACKARD AVENUE
RACINE, WISCONSIN 53403

June 12, 1969

Skrmetta Machinery Corporation
3535 Laverlina Street
New Orleans, Louisiana 70125

Gentlemen:

We refer to your letter of May 27 in which you indicate that you manufacture shrimp processing machinery and have a customer in Brazil interested in importing lawn mowers.

We do appreciate your interest in selling to Brazil, but we must inform you that there are very strict import license and exchange regulations in effect in that country. We have not, ourselves, been successful to ship units in to that country in any quantity in recent years.

In the meantime, please let us have a little more information about your firm. We do not find you listed in Dunn and Bradstreet, and our credit department would, of course, require additional data for their information.

One other question that we have is... we would appreciate that you let us know what type of customer you are dealer with. Is this firm in Brazil in the lawn mower distribution business?

We look forward to your comments at your convenience.

Thank you very much.

Very truly yours,

Coutrio Coat
São Paulo, Brazil

JACOBSEN
LAWN EQUIPMENT

Richard W. Nelson/dm

Manager, International Department

DIVISION: JOHNSTON LAWN MOWER DIVISION, BROOKHAVEN, MISSISSIPPI

27-61

Photographs of the machines taken at both the Dulac Plant and the Biloxi exhibit in 1954 are available and the machines shown therein are in all material respects, identical to the machines Laitram now has.

II. I also believe the Laitram slitter/deveiner was pictured in trade magazines prior to September 27, 1954, and this perhaps could form a second, independent basis of invalidating the Laitram Brazil patent as having been described in a printed publication prior to the Brazil filing date.

III. It is noted that the Brazilian patent was filed for more than one year after Laitram had filed its U.S. Application (September 27, 1954 as compared to August 19, 1952). Is this also absolute grounds for invalidating its patent?

IV. Rather than filing a court action to invalidate the Brazilian Patent, are the above grounds as well as the ground of non-wording for three consecutive years just as effective as defenses against any actions Laitram may take against Deepsouth or our customer? Would Brazilian law allow Laitram to obtain a preliminary injunction against our customer, particularly in light of the U.S. Court holding of infringement, stopping our customer from using the Deepsouth machine, or would the Brazilian Court wait until the full matter had been tried and both sides heard? If we filed a petition to cancel the Brazilian Patent, would we have to wait until the petition is granted before importing the deveiner? How long do these proceedings take? In general, could you please compare the advantages and disadvantages (costs, time required, etc.) of filing a petition to cancel the patent as compared to waiting until Laitram filed an opposition or infringement suit with Deepsouth therein defending the action on one or more of the above mentioned grounds?

Your prompt response to my questions would be greatly appreciated. You may address your reply to either Mr. Skrmetta or to me at my above listed New Orleans address.

Enclosed is a check for $100.00 in payment of your statement.

Yours very truly,

Emmett Pugh

CEP/cs

Enclosure

27-62

February 5, 1970

Companhia Nacion de Frigorificos - CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Att: Mr. Roberto Gasparian

Dear Roberto:

All last week and most of this week the Flu went trough our organization and this week I have been out with the flu. I am beginning to get better and expect to be on my feet for next week. This is the first time that I have been ill in more than 10 years, but only midly ill.

Please explain to Rubens that I have delayed the plant layout drawing until now because of the flu. We will rush same on to you next week.

We promised Rubens a copy of the letter we received from Valenca in Rio and our attorney sent same on early this week, together with a copy of his reply letter. We do appreciate your cooperation in this matter.

We want to thank you and Rubens and with kindest personal regards to your family, we remain

Yours very truly,

SKRMETTA MACHINERY CORPORATION

Ray Skrmetta, President

GS

27-63

February 13, 1970

Companhia Nacion de Frigorificos - CONFRIO
Rua Serra da Bocaina, 194
Sao Paulo, Brazil

Attn: Mr. Roberto Gasparian

Dear Roberto:

We have slightly changed a few measurements on our feed conveyor and it now will fit in the exact space of item Number 5 (The deveiner) on the layout of your shrimp plant drawing by Piero Rodriguez. The only difference will be that at the feed end of the conveyor we will be 3 inches lower than the Laitram deveiner and at the discharge end we will be 18 inches higher. We will actually sit in the same area provided for the deveiner in your drawing and no additional change is required.

With your permission, we would like to keep the copy of the drawing on the layout of your plant in our files for future reference, may we have your approval to do so?

The one question we have to ask that is not shown on this drawing is the height of the ceiling in the area of the deveiner, will you please furnish us this information by return mail?

We actually use less height than the Laitram Deveiner. If you have sufficient height provided for the Laitram Deveiner, we will still fit in considerably under that height.

We want to thank you for the excellent cooperation of yourself and your brother Rubens, he was especially kind to us on the telephone in our several conversation with him from New York. I do look forward to meeting him in person and visiting with you in Brazil.

We are progressing according to schedule and hope to have much more information available to you by the end of the next week.

We thank you for your cooperation and with kindest personal regards to you and Daisy and the entire family, we remain

Yours very truly,

BERETTA MACHINERY CORPORATION

Ray Beretta, President

DEP #29 - 27

2/20/70

Cable

Confirm

Your cable received Shall
progressing for shipment
end next week. Kindest
regards.

Dejan

27-68

CHASE METALS SERVICE

LOCAL STOCKS: ALUMINUM • BRASS • COPPER • STAINLESS

1000 So. Jefferson Davis Pkwy., P.O. Box 13278 Tel. 486-5441
New Orleans, La. 70125

CONFRIO

MACHINE COMPLETED

TOMORROW WILL TELEPHONE

IN AFTERNOON REGARDS

T DEPACO

27-69

DEP Exhibit 19.

CHASE METALS SERVICE

LOCAL STOCKS ALUMINUM · BRASS · COPPER · STAINLESS

1000 So. Jefferson Davis Pkwy., P.O. Box 13278 Tel. 486-5441
New Orleans, La. 70125

-Foreign Activities-

Although there has been no organized promotion of foreign sales of defendant's deveining machinery, including the rocking slitter and the discharge conveyor, some contacts have been made. When an acceptable order is placed, it is the intention of defendant and/or of Skrmetta Machinery Corporation to fill such an order by only partially constructing and supplying the rocking slitter and discharge conveyor by leaving out the knives and the fingernail belt, respectively. Such a practice is not an infringement of plaintiff's U.S. deveiner patents under the U.S. patent laws.

It is well established that infringement of a combination patent occurs only through a combination comprising every one of its elements or a mechanical equivalent. Roswell v. Lindsay, (1885), 113 U.S. 97, 5 S. Ct. 507; Cimiotti Unhairing Co. v. American Fur Refining Co. (1905) 198 U.S. 399, 410, 25 S. Ct. 697; I.T.S. Rubber Co. v. Essex Rubber Co., (1926), 272 U.S. 429, 444, 47 S. Ct. 136; Leaktophone Corp. v. Rola Company, (1930), 282 U.S. 168; Walker on Patent (Deller's Ed.) Sec. 461, p. 1697. Thus the "devices" made and sold without the knives and fingernail belt therein would not infringe plaintiff's patents.

A parallel situation is found in the case of RCA v. Andrea (CCA-1, 1935) 79 F. 2d 626, wherein a U.S. manufacturer was selling a radio in "kit form". The radio was complete except that the tubes, although packaged in the same container, were not placed in their sockets. The radios were sold for final assembly abroad, that is, outside the territorial U.S. The Court held that there was no direct or contributory infringement of the patent which claimed a combination including the tubes because the patent grant only covered the territorial U.S. and not foreign countries. See also Cold Metal Process Co. v. United Engineering & Foundry Co. (CA-3, 1956) 235 F 2d 224, 230; and Hewitt-Robins Inc. v. Link Belt Co. (DC-Ill., 1966) 148 U.S.P.Q. 530, 531 and the same case being affirmed at 371 F 2d 225, 229 et seq., 151 U.S.P.Q. 670, 674 (CA-7, 1966).

DEP Exh. 28A

Thus, notwithstanding plaintiff's inaccurate remarks to the contrary, Skrmetta Machinery Corporation, much less defendant or Mr. Skrmetta personally has not offered for sale in the United States any machine which would be an infringement of plaintiff's U.S. patents.

As to plaintiff's foreign patent rights, plaintiff continues to refuse to permit defendant access to its foreign patent files, the same documents plaintiff previously offered defendant, so defendant can determine whether or not any adverse patent rights exist in these foreign countries. Of course, plaintiff in its usual cagey manner refuses to state on its own what countries it has foreign patent rights, just as it refused to attend the demonstration in 1964.

Thus, not only is defendant or Skrmetta Machinery Corporation not guilty of any wrong doing, it is plaintiff that persists in acting arrogantly and in bad faith.

-Adding New Parties-

Plaintiff not only seeks to enjoin defendant from acts it legally has a right to perform, but it also wants this Court to add parties to the injunction which are entirely new to this litigation, viz., the Skrmetta Machinery Corporation and Mr. Skrmetta personally.

If plaintiff wished to have Mr. Skrmetta joined in this action, it could have done so when it filed suit as it did when it filed the pending litigation. Heretofore, particularly in the laches issue, plaintiff strenuously argued the separateness of the various Skrmetta business entities, but now apparently, it dances to a different tune, and sees all the Skrmettas and their business activities as one. Its inconsistency should not be sanctioned by this Court.

As pointed out above, neither defendant, Skrmetta Machinery

Dep. Ex. 283

500 SAINT PETER STREET
(JACKSON SQUARE)
NEW ORLEANS, LOUISIANA 70116
(504) 522-4211

1364 NICHOLSON DRI
BATON ROUGE, LOUISIANA
(504) 343-6041

Law Offices of
C. EMMETT PUGH
Registered Patent Attorney

March 10, 1970

Honorable Alvin B. Rubin
U.S. District Court
400 Royal Street
New Orleans, Louisiana 70130

Re: Laitram v. Deepsouth Packing, CA 67-861

Dear Judge Rubin:

On behalf of my client and myself, we would like to thank you for the expeditious and considerate manner in which you handled defendant's recent motion to modify the injunction in the above referenced matter.

Mr. Skrmetta was out of town today, but I was able to reach him by telephone and I conveyed to him your decision as to both the Brazil matter and the wording of deveiner advertising.

In accordance with your decision, Mr. Skrmetta will not advertise his deveiners as proposed, i.e. with the notation "all models not available in the United States". Although we respectfully disagree that such advertising would have been misleading because of the availability of Mr. Skrmetta's jet washer and mesh belt discharge conveyor, Mr. Skrmetta desires to cooperate completely with the Court. In any advertisement in which his shrimp deveiner is mentioned, there will be prominently included the notation, "Available only for export in partially unassembled form and use in foreign countries" and such advertisements will only appear in those industry magazines having at least substantial foreign distribution.

Yours very truly,

C. Emmett Pugh
Attorney for Defendant

cc: Louis B. Claverie, Esquire
Attorney for Plaintiff

Deepsouth Packing Company, Inc.

Cable Address: "PAT. PEND.—NEW ORLEANS"

THE AUTHORITY OF THE SEAFOOD TRADE
SERVING—PROTECTING
CONTINUOUSLY SINCE 1970

FISHING GAZETTE

APRIL
1970

NFI SILVER ANNIVERSARY CONVENTION

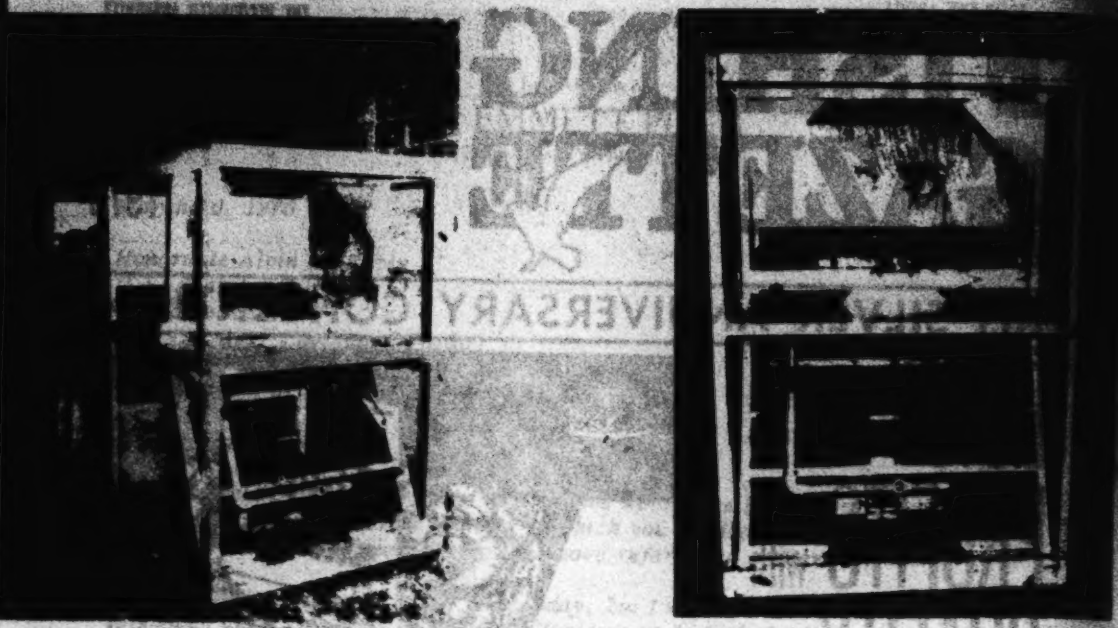
BUILD PROFITS with QUALITY SHRIMP

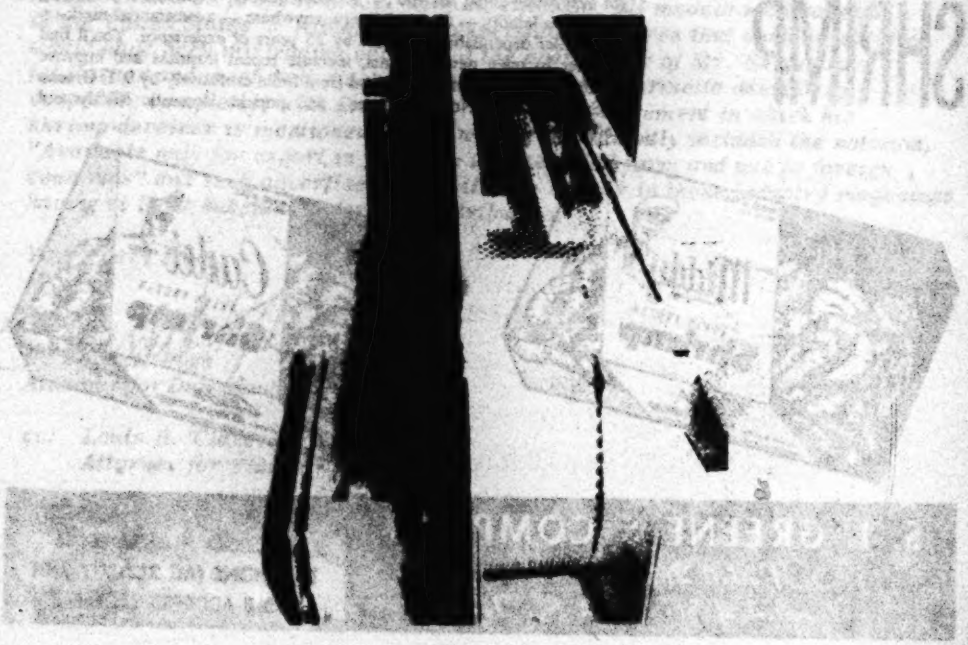
When you offer fresh-frozen Shrimp from S. I. Greene & Co. you've got everything going for you . . . superior quality — attractive packaging — top availability — fastest delivery, anywhere — a substantial mark-up — supplier dependability backed by 25 years of experience. You'll find it easier to open new accounts, increase repeat business and improve profits with Raly Brand (imported from India exclusively by S. I. Greene & Co. for all of North America) and popular domestic Middy and Cadet Brands.

S. I. GREENE & COMPANY

2A

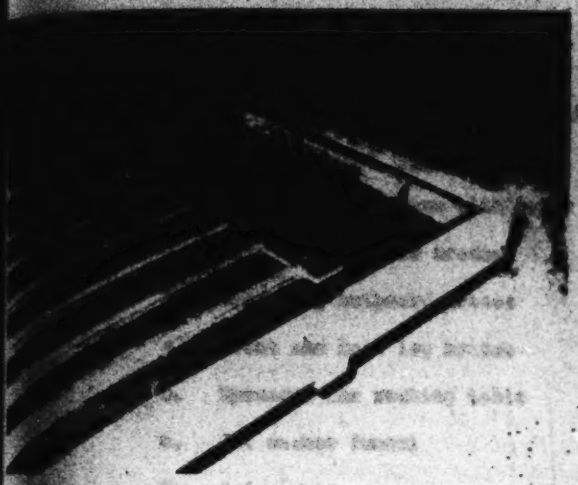
Box No. 1
(Discharge conveyor with mesh belt therein, boxes of razor blades, etc.)

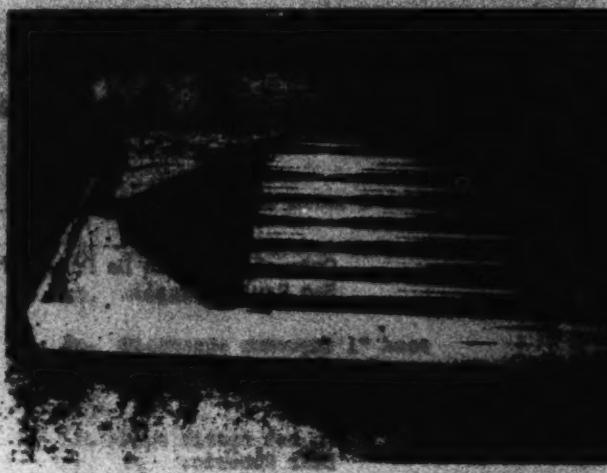




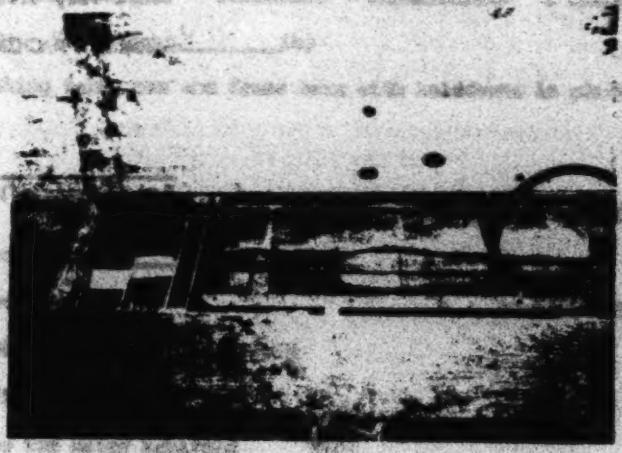
-Close-up of mesh belt in discharge conveyor-
A-1

Box No. 2
(Trough or rocking table)





Box No. 3
(Two "fingernail" belts and water header or manifold, etc.)



March 2, 1970

Companhia Nacoim De Frigorificos
Sao Paulo, Brazil

Attn: Roberto Gasparian

Dear Roberto:

Enclosed, is information on the three boxes containing the deveiner parts being shipped today.

We look forward to visiting with you after the machine has arrived.

We want to thank you and Rubens for your kind order, but more importantly, your faith and friendship during some of the more trying circumstances.

With kindest personal regards, we remain,

Yours very truly,

SIKMETTA MACHINERY CORPORATION

Ray Sikmetta, President

RS/pjg

BOX NO. 1

[illegible] Cu. Ft.

Contains: (weight 17. lb)

1. Main drainer frame with motor
2. Back leg outboard bracket
3. Front leg outboard bracket
4. Front and back leg brackets
5. Spreader for rocking table
6. Jet washer funnel
7. Jet washer
8. Discharge conveyor with mesh belt
9. Feed conveyor end baffle deflector
10. Right and left platforms
11. Feed conveyor motor & motor base
12. Discharge conveyor deflector
13. 4 [illegible]
14. Discharge conveyor 1" hose
15. 3 H.P. water pump
16. Pipe fitted for pump
17. 2 spare v belts
18. Water pipe for jet washer
19. Blade holder
20. Bolt and nuts

BOX NO. 2

[illegible] Cu. Ft.

Contains: (weight [illegible] lb)

1. Rocking table pan and frame base with holdowns in place

BOX NO. 3

[illegible] Cu. Ft.

Contains: (weight [illegible] lb)

1. Feed conveyor
2. Rocking table water manifold
3. 2 fingermail belts
4. Hose for water manifold
5. Rocking table connecting arm

C1

Appendix C

Excerpts From Record on Appeal in Appeal No. 29,776

Translation of Exhibit 12B

BANCO DO BRASIL, S. A.
FOREIGN TRADE DEPARTMENT

IMPORT LICENSE

Importer: Cia. Nacional de Frigorificos CONFRIO
Address: Rua José Bonifacio 176, 10th floor, São Paulo
C. G. C. No.: 71 039 119 Telephone: 33-9013
Port of unloading: Santos
Consignee: The same
Country of origin: U. S. A.
Country of provenance: U. S. A.
Application of the goods: For own use
Category: General
Equivalent amount in new cruzeiros (CIF): 61,887.00
Quantity: 1
Specification of the merchandise: (Customs classification: 84-33-008)
One complete automatic machine for deveining shrimp, with settings for small and large sizes.
Net weight in kg.: 1,450
FOB Price, foreign currency: Unit: US$13,250.00 Total: US$13,250.00

"The importer intends to avail himself of the advantages provided in Decree Law No. 221 of 2-28-67, under which the present import may have the following benefit: Total exemption of duties and taxes."

"If by sea, the transport must of necessity be made in a Brazilian flag ship."

We certify that there exists no similar national product for the merchandise contained in this document.

Total kg.: 1,450

Total FOB:	US$13,250.00
Estimated freight and insurance:	1,450.00
Estimated CIF price:	US$14,700.00

Estimated CIF price written out in full: FOURTEEN THOUSAND SEVEN HUNDRED DOLLARS.

The foreign Trade Department of the Banco do Brasil, S. A., issues, for the importation of the merchandise indicated above, the present License No. DG-69/12566-15023

Valid for shipment until June 10, 1970
Rio de Janeiro, December 10, 1969

Foreign Trade Department
s/ Francisco Pagy

For presentation by the exporter to competent consular authorities for the legalization of shipping documents.

C2

Translation of Exhibit 12C

BANCO DO BRASIL, S. A.
FOREIGN TRADE DEPARTMENT

ATTACHMENT TO IMPORT LICENSE NO. DG-69/12566-15023

Net weight in kg: 1,450
Quantity: 1
Description: One complete automatic machine for deveining shrimp, with setting for small and large sizes, "Skrmetta" model BV 470, series 1201, with "Syncrohear" electric motor of 1 HP, three-phase, 60 cycles, 220/440 volts, completely enclosed; feed conveyor with electric motor of 1/3 HP, 220/440 volts, 60 cycles, discharge conveyor with electric motor of 1/2 HP, 220/440 volts, 60 cycles and water jet washer.
Price in foreign currency: Unit: US$13,250.00 Total: $13,250.00

Total:	**US$13,250.00**
Estimated Freight and insurance:	**1,450.00**
CIF price:	**US$14,700.00**

Port of unloading: Santos
Comments: (blank)

Name of the importer of the machine:
Companhia Nacional de Frigorificos CONFRIO

For presentation by the exporter to competent consular authorities for the legalization of shipping documents.

For use by For. Tr. Dept.

_____ 19...

Foreign Trade Department

(signed) (signed)

CHAPTER I

General Provisions

SECTION I

Regarding Authors or Applicants

Article 4. To the authors of an invention, industrial model or industrial design, there shall be assured the right to obtain a patent which guarantees their ownership and exclusive use, under the conditions established in this Code.

§ 1 - For the purpose of the concession of a patent, the applicant for the privilege is presumed to be the author.

§ 2 - The privilege may be applied for by the author of the invention, his heirs and successors, authorized juridical persons or eventual transferees of the respective rights, upon presentation of the appropriate document, the legalization or authentication thereof being unnecessary.

§ 3 - In case of an invention by two or more persons jointly, the privilege may be applied for by all of them or by any one of them, safeguarding the respective rights, with the name and description of all of the inventors.

SECTION II

Inventions, Models and Designs Eligible for Privileged Treatment

Article 5. There are eligible for privilege, the invention, industrial model, and industrial design considered new and susceptible of industrial utilization.

Sole § - There are considered new, the invention, model, and design which, through the date of the deposit of application for a patent, have not been deposited, patented, divulged or utilized in Brazil nor patented, divulged or utilized abroad, except for the provisions of articles 6 and 17 of this Code.

SECTION III

Guarantee of Priority

Article 6. A person who, before the applying for a patent, intends to make demonstrations, communications to scientific associations or exhibitions of the invention in official or officially recognized expositions, to safeguard priority, is to request the respective guarantee from the National Department of Industrial Property, presenting a substantiated descriptive report, and designs, when applicable, and evidence of the payment of the corresponding fee.

challenges or appeals, when presented by attorneys at law or agents of Industrial Property, are to be accompanied by the power of attorney, in original or photocopy, legalization or authentication not being necessary.

Sole § - The power of attorney, when not presented initially, is to be added by means of protocoled petition and independently of any notice, within the maximum period of sixty days from the date of presentation of the petition, opposition, challenge, or appeal, under penalty of automatically placing the proceedings or the respective documents, as the case may be, in the inactive file.

Article 162. A person domiciled abroad, to deposit requests for privileges or registrations, is to name an attorney-in-fact, domiciled in Brazil, to represent him before the National Department of Industrial Property during the period in which the privilege or registration is in force, and who can receive judicial citations regarding the Industrial Property.

Sole § - The period for answering actions in which the citation is made pursuant to this article shall be sixty days.

CHAPTER VIII

Final and Transitory Provisions

Article 163. The requirements for patentability and registrability shall be regulated by the law in force on the date of the application, but the processing thereof shall be governed by the present Code.

§ 1 - Applications for privilege of invention, of utility model, and of industrial model or industrial design, deposited before the effective date of the present Code, the characteristic points of which have been published and the technical examination of which have been concluded, may be concluded without necessity of repetition of such formalities.

§ 2 - Applications for privilege of utility model presented in accordance with prior legislation shall be regulated and processed as applications for privilege of invention or of industrial model, pursuant to the provisions of this Code.

Article 164. Privileges of invention, of utility model and of industrial model or design granted up to the date when the present Code enters into force, shall enjoy the appropriate periods of time and conditions of protection established by prior legislation, provided that the fees which are due are regularly paid pursuant to the following article and its sole paragraph.

§ 2 - Proceedings of registration of marks, titles of establishment, advertising expressions or symbols, underway on the date on which this Code enters into force, shall be reclassified in accordance with such new classification as may be adopted, before the final dispatch is given, by the Director General of the National Department of Industrial Property.

Article 169. There apply to international marks, while they are in force in Brazil, the same rights established in this Code for foreign marks as regards transfer, alteration of name, cancellation, desistance, lapse and renewal.

Article 170. Applications for registration of a mark in more than one class, presented during the life of Decree-law nº 254 of February 28, 1967, are to be divided in accordance with paragraph 2 of article 96 of this Code, upon request of the interested parties, within the period of sixty days of the date on which same enters into force, under penalty of automatic and definitive dismissal.

Article 171. Applications for reconsideration and appeals, to which articles 14 and 15 of Law nº 4.048 of December 29, 1969 refer, interposed up to the date on which Decree-law nº 254 of February 28, 1967 went into force, shall be decided respectively by the Director General of the National Department of Industrial Property and by the Council of Appeals for Industrial Property.

Article 172. The present Code shall enter into force sixty days after the date of its publication, the regulation hereof to be decreed within such period, as well as the restructuring of the National Department of Industrial Property, revoking provisions to the contrary.

Brasilia, October 21, 1969, 148th year of Independence, and 81st year of the Republic.

Augusto Hamann Rademaker Grünewald
Aurélio de Lyra Tavares
Marcio de Souza e Mello
Edmundo de Macedo Soares

Translation by
PAUL GRIFFITH GARLAND

English translation of Article 7 and its paragraphs of Federal Decree-law no. 7.903, of August 27, 1945, which remained in force until the end of May, 1967. This Article corresponds to Article 5 of Decree-law no. 1,005, of October 21, 1969, in force until December 31, 1971:

"Article 7 - There is eligible for privilege in the sense of the present Code every invention considered new and susceptible of industrial utilization.

Paragraph 1 - There is considered new the invention which:

a) through the date of the deposit of the application for patent has not been, in the country, deposited or patented, nor used publicly or described in publications in such a way that it might be made;

b) that until one year before the deposit of the application for patent, in the country, has not been patented abroad, nor described in publications in such a way that it might be made.

Paragraph 2 - The novelty of the invention shall not be invalidated by communications made to scientific societies, professional technical associations, legally constituted, or divulged by means of contest thesis, expositions or official or officially recognized fairs, provided that the inventor files the application for privilege within one year, from the date of happening of said events."

UNREPORTED DECISION OF HAND, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY and RADIO CORPORATION OF AMERICA,

Complainants,

-against-

E 29/110

EXPERIMENTERS INFORMATION SERVICE, Inc., GOLDEN-LEUTZ, Inc., CLAUDE GOLDEN and CHARLES A. LEUTZ,

Defendants.

CHARLES NEAVE, L.F.H. BETTS and STEPHEN H. PHILBIN,

for the motion

SEWARD DAVIS, opposed.

LEARNED HAND, D.J.: The suggested defense is only a challenge of the adequacy of the prima facie proof. Have the defendants in fact sold radio sets of the kind in evidence which concededly infringes the patent in suit? If so, which of them did so? They have all failed to reply to the affidavits and rely altogether upon the denials in the answers of the two corporation defendants. The effect of swearing to an answer is not as it was under the old rules. The answer need not be sworn to, because now discovery, which was the former occasion for the oath, is obtained by interrogatories. If the defendants choose to swear to the answer, no doubt they may use it as an affidavit, but it counts for no more than any other affidavit.

I shall take up the defendants separately. The proof of Golden's infringement is clear enough. In December, 1923, he was doing business under the name, Experimenters Information Service, as appears by his certificate filed in the County Clerk's office on August 21, 1921. The competency of the proof of the certificate is challenged because it rests only on Blake's affi-

davit and no properly certified copy of the certificate is produced. The formal objections to it do not include, as in respect of the other affidavits, that it is not entitled in the suit and I hold the defendants as strictly as possible to their highly technical position. The objection actually taken is bad because upon motions for preliminary injunction, strict common-law proof is not indispensable, Casey v. Cincinnati Typo. Union, 45 Fed. Rep. 135, 147, Buck v. Hermance, 1 Blatch. 332. If the truth were otherwise than as Blake states Golden could have denied it. It is enough proof of infringement that so doing business, he sold one infringing machine to Edelmann.

As to the two corporations, the proof consists of the affidavit of Israel that on February 14, 1924, he was told by a salesman that Experimenters Information Service and Golden-Leutz Inc. were offering the infringing apparatus for sale. On March 12, 1924, Baldwin told him that the two companies were the same, the Experimenters Information Service, Inc. having been meanwhile incorporated. Baldwin then sold him a complete set of parts unassembled and delivered them either by express or directly.

The argument is that this does not constitute an act of infringement though it may be an act of contributory infringement; that for the jurisdiction of this court there must be at least one complete sale. But it is an infringement to divide the patented machine into parts ready for assemblage, even though the party who is to use them must put them together, Strobridge v. Lindsay, Sterritt & Co., 6 Fed. Rep. 510, Spirella Co. v. Nubone Corset Co., 180 Fed. Rep. 470, 473. Such a sale is not contributory but complete infringement. Here it is true that the set, strictly speaking, is a unity, but all the parts making it up were supplied and it would be unreasonable to hold that the infringement was not complete because they were sold in a "knocked-down" condition.

The proof is meagre as regards Leutz individually. I can find no evidence in the papers that he personally participated in the Experimenters Information Service before its incorporation. Probably he did in fact, but his name was stricken off the original certificate of "doing business", and his connection is now shown. As an officer and director of the corporations he is not a proper party unless some more active participation can be shown. The defendants are entitled to some positive proof and it seems to me lacking.

Injunction pendente lite against the two corporations and Golden, denied as to Leutz.
July 21, 1924.

UNREPORTED DECISION OF INCH, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RADIO CORPORATION OF AMERICA and AMERICAN TELEPHONE & TELEGRAPH COMPANY,

Plaintiffs,

vs.

In Equity No. 7624.

FRANK A.D. ANDREA and FRANK A.D. ANDREA, INC.,

July 29, 1935.

Defendants.

****

APPEARANCES:

SHEFFIELD & BETTS, ESQ.,
Solicitors for Plaintiffs,

THOMAS G. HAIGHT and ABEL E. BLACKMAR, Jr., ESQS.,
of Counsel.

DARBY & DARBY, ESQS.,
Solicitors for Defendants,

SAMUEL E. DARBY, Jr.,
of Counsel.

INCH, J.

This is a motion for a temporary injunction in a patent infringement suit. The patents involved are the DeForest (U.S.) Patents #1,507,016 and #1,507,017. These patents cover a feed-back circuit and vacuum tube oscillator. Both patents have been held to be valid by the United States Supreme Court.

The defendants do not deny the validity of either of these patents nor the scope of their claims.

It is interesting to note that Claim 25 of Patent #1,507,016 reads as follows:

"25. Means for producing sustained electrical oscillations comprising an oscillatory circuit having two electrodes in an exhausted receptacle and a second circuit coupled thereto having a conducting body interposed between said electrodes."

Avoiding any controverted fact I find that the defendants are in the business of manufacturing and selling radio receivers and have been so engaged for many years back.

Defendants now manufacture only a receiving set, but buy the vacuum tubes from a licensee of plaintiff. They then sell, in one package, this receiving set in its wrappings, and these necessary tubes the latter not inserted in the tube sockets of the set but packed in a separate carton. This complete package is then delivered to the buyer either at defendants' plant, upon the buyer's promise that the combination will not be used or resold in this country, or it is delivered to the buyer at the steamship pier, free alongside.

The defendants do not manufacture the tubes. They claim an implied license to do what they are doing from the fact, that they buy these tubes from a licensee of plaintiff. I find no ground for any such implication. General Electric Co. vs. Continental Lamp Works 280 Fed. 846.

While neither disputing the validity nor scope of the patents, nevertheless, defendants claim that this motion should be denied because there has been no proof of direct or contributory infringement by them of any of the claims. This argument is based on the assertion that the claims of the patents cover a new combination of elements. That this combination consists of three elements, to wit, the audion tube, a circuit connecting the electrodes of the tube and current sources for lighting. In other words, three necessary elements, while all that defendants manufacture and sell is the radio receiver cabinet with its electric circuits properly wired therein. The tubes are purchased, as aforesaid, from a licensee and the current sources are missing.

Therefore, they say, until these current sources are supplied, and the tubes actually inserted in the sockets of the said circuit, the combination covered by the patents does not come into existence. That in order to directly infringe, all

three of these elements, in operative combination, must exist.

The claim is also made by defendants that they are not guity of any contributory infringement for the reason that under the terms of all sales this complete assembly of the three elements takes place outside the United States. As to this, defendants rely on the case of Bullock etc., vs. Westinghouse etc., 129 Fed. 105.

However, the combination covered by Claim 25, mentioned at the beginning of this decision, and being a proper sub-combination, does not include one of the elements so claimed to be necessary by defendants, to wit, the current sources. Nor is this a case where defendants sell but one element in a combination and the purchaser is then required to obtain the remaining elements elsewhere in order to enjoy the patented combination.

On the contrary, the defendants do manufacture and sell in this country, a receiving set wired and ready for the tubes and at the same time sell and place in the possession of the buyer the tubes themselves, so that all the buyer has to do is to place the tubes in the circuit.

There is satisfactory evidence that each set is tested by defendant before sale or packing for delivery, but aside from this and the further fact that the delivery of those sets not sold at defendants' place of business are delivered in this country, "free alongside" of the ship, it seems to me for the purposes of this motion that the defendants are manufacturing and selling a complete combination infringing one or more of the plaintiff's patents although the said vacuum tubes are not at the time, actually inserted in the sockets of the receiver circuit, but are delivered with the receiver circuit in a separate package as a part of a single sale.

The manufacture and sale in the United States of an infringing article, whether it consists in a combination or otherwise duly patented, is forbidden. Likewise the manufacture of such an infringement in the United States for sale elsewhere is within the protection of the patent. Ketchum etc., vs. Johnson 8 Fed. 586. Bullock etc., vs. Westinghouse etc., 129 Fed. 105.

If this monopoly is lawful it may be a hardship on

defendants that they have not been able to obtain a license but this, and questions related to such exercise of power, by owners of patents, are irrelevant to the controversy presented by this motion.

There has been no delay in the making of this motion and in my opinion the complainants have made a prima facie case for a preliminary injunction which the defendants have not overthrown.

Accordingly such preliminary injunction will issue upon the filing by the complainants of a sufficient bond, the amount of which I cannot at the present time determine. This can be ascertained later by the court on the settlement of the order to be entered, or the parties may agree upon same, in which case, the amount of the bond may be inserted in said proposed order.

Motion granted. Settle order on notice.

Robert A. Inch,
U.S.D.J.

IN THE

United States District Court

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE COLD METAL PROCESS COMPANY and THE UNION NATIONAL BANK OF YOUNGSTOWN, OHIO, Trustee, Plaintiffs,
v.
UNITED ENGINEERING & FOUNDRY COMPANY, Defendant

Equity No. 2991

REPORT OF SPECIAL MASTER

J. Garfield Houston, Special Master
1307 Oliver Building
Pittsburgh 22, Pennsylvania

WILLIAM H. WEBB
CLARENCE B. ZEWADSKI
WILLIAM WALLACE BOOTH
Attorneys for Plaintiffs
1230 Farmers Bank Building
Pittsburgh 22, Pennsylvania

JO BAILEY BROWN
JAMES S. CRAWFORD
PAUL N. CRITCHLOW
JULIAN MILLER
Attorneys for Defendant
1706 First National Bank Building
Pittsburgh 22, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 436-438 BLVD. OF ALLIES, PITTSBURGH 19, PA.

from the parties the following payments: December 5, 1949, $7,500; November 21, 1951, $8,000; December 11, 1953, $7,500, each party paying one-half. At the time this report is compiled no payments have been made for services of the master subsequent to November 30, 1953.

United manufactured and sold 152 four-high mills subsequent to October 21, 1930 on which date patent 195 was issued. For some of these mills Cold Metal does not make claim for royalties, and for others claims made were withdrawn. The master has determined United is not liable for royalties on 32 mills sold to purchasers outside the territorial limits of the United States.

The master has determined and herein reports that Cold Metal is liable for royalties on 91 mills as listed in Appendix B to this report and which were sold subsequent to October 21, 1930. The indebtedness of United to Cold Metal for royalties on these 91 mills is $387,650.

There is listed in Appendix C data with respect to mills sold by United prior to October 21, 1930. The master has determined that United is not legally obligated to pay royalties on these mills. Cold Metal claims that United has admitted liability for royalties on the mills listed in Appendix C by statements appearing in the brief filed by United with the master, and rests its claim for royalties on these mills solely on the statements of United. The statements which Cold Metal claims constitute admissions of liability are so qualified and indefinite that the master did not consider it appropriate for him to attempt to construe them without further clarification of United's position with respect to the mills in this category. The master requested counsel for United to clarify their position but they have not done

94. On June 27, 1930 United sold to Thompson Wire Company mill No. 41. By a release, Exhibit AAA, for a recited consideration of $95,000.00 paid December 31, 1951, Cold Metal released Thompson from any and all claims for infringement of U. S. Letters Patent 016 and 195 and agreed to dismiss a pending action for infringement brought by Cold Metal against Thompson in the United States District Court for the District of Massachusetts, Civil Action No. 6797.

95. Cold Metal's breaches of performance of its obligations under the 1927 contract were not justified by the conduct of United.

96. Subsequent to the execution of the Cold Metal-United contract of 1927, the parties agreed that payment of royalties by United under said contract was to be postponed until Patent 195 had been litigated and held valid.

97. Patent 195 was litigated and held valid in *Cold Metal Process Company v. United Engineering & Foundry Company*, in the United States District Court for the Western District of Pennsylvania, in Equity No. 2506 (3 F. Supp. 120).

98. United sold and delivered 32 mills to purchasers beyond the territorial limits of the United States, viz., mills Nos. 69, 70, 71, 89a, 89b, 90, 91, 92, 93, 104, 108, 109, 110, 116, 118, 119, 120, 121, 122, 123, 130, 135, 136, 141 (one stand), 146, 148, 167, 168, 169, 180, 181, 194.

99. The facts relating to the mills sold by United to customers beyond the territorial limits of the United States were stipulated by the parties by Exhibit PM-7 which, by reference, is incorporated in this finding.

Note: Because of the size of Exhibit PM-7, it was not deemed practical to set forth its contents

15. Whether Cold Metal obtained patent 195 as a result of fraud, either in the patent office or on the public, is a question not open for consideration by the master, it having been decided in Equity 2500 and in *United States of American v. Cold Metal Process Company, et al.*, in the United States District Court for the Northern District of Ohio (62 F. Supp. 127, affirmed on appeal, 164 F. 2d 754), that there was no fraud.

16. United is not liable to pay royalties to Cold Metal on 32 mills listed in finding 98, which were sold and delivered to customers beyond the territorial limits of the United States.

17. United is not discharged of liability to pay royalties on the 10 mills listed in finding 88, by reason of the fact that Cold Metal licensed the purchasers to use the mills, and for such use collected from each purchaser royalties in excess of the royalties payable by United to Cold Metal under the 1927 contract computed at the rate set forth in the master's 9th conclusion of law.

18. United is not discharged of liability to pay royalties on the 9 mills listed in findings 92, 93 and 94 by reason of the fact that Cold Metal released the purchasers of liability for infringement of patents 195 and 016 in consideration of payment of an amount in excess of the royalties payable by United to Cold Metal under the 1927 contract computed at the rate set forth in the master's 9th conclusion of law.

19. United's license rights under the 1927 contract commenced October 21, 1930, when patent 195 was issued, and ended seventeen years thereafter, on October 21, 1947, when patent 195 expired.

postponed *by agreement*. From this it does not follow that royalties on mills sold prior to March 5, 1934 became due and payable by United on that date. Other circumstances may determine when royalties became due and payable by United both on mills sold before and after March 5, 1934. The master has considered the pertinent circumstances and the effect thereof in Section X of this report.

SECTION VII.

Discussion of Liability for Royalties on Mills Sold by United to Purchasers Outside the United States.

The facts relating to the mills in this category, which are hereinafter referred to as the "foreign mills", have been stipulated by the parties in Exhibit PM-7. In addition the master has made findings Nos. 98 and 99. The master's conclusion is No. 16.

In the following discussion the master has summarized the facts of Exhibit PM-7 on which he bases his conclusion so that the reader can follow the discussion without referring to Exhibit PM-7 which is a voluminous document.

CONSTRUCTION AND APPLICATION OF THE 1927 CONTRACT

Cold Metal argues that its relationship with United is contractual and that under a liberal interpretation of the 1927 contract and the license arising thereunder, Cold Metal's claim for royalties on the foreign mills is stronger than its claims would be against a non-licensee as an infringer if the non-licensee had acted as United did with regard to the mills sold to foreign customers. On the other hand United's position is that its liability for the foreign mills should be determined in accordance with

the rules of patent law which would be applicable to a non-licensee who acted as United did.

The 1927 contract is not per se a license, but is an agreement providing for the granting of a license. Paragraph 8 states the scope of the license to be granted:

> "When and if such claim or claims to common subject matter (the reference being to the common subject matter of the then pending patent applications of United and Cold Metal) are granted in any patent issued on Cold Metal's applications, Cold Metal shall grant to United a license to make, use and sell rolling mills under such claim or claims," etc.

A United States patent grants to the patentee "the exclusive right to make, use and vend the invention or discovery throughout the United States and the territories thereof." Rev. Stat. Sec. 4884; USCA Title 35, Sec. 40. Obviously the statute gives no protection to a patentee outside the United States and its territories. Anyone could with impunity make, use and vend the invention covered by patent 195 outside the United States and its territories.

The 1927 contract should be construed the same as other written contracts to give effect to the intent of the parties. *Baldwin Rubber Company v. Paine & Williams Company*, 107 F. 2d 350.

Taking the language of the 1927 contract literally, it does provide that United is to pay a royalty for all mills it makes, uses or sells within the scope of the contract. But in view of the rules of patent law, this language cannot be taken literally. If United had manufactured mills in Canada, and sold them in Canada for use exclusively in that country, it would hardly be asserted that it would be liable to pay royalties on such mills. There must be

read in connection with the 1927 contract the limitation of the statute which gives a patentee protection only within the United States and its territories.

Cold Metal's brief (page 20) states that in the making of the 1927 contract Cold Metal "was seeking a partner to assist it in the manufacture and sale of the patented mills." No reference to the evidence is given but the master assumes that counsel is referring to the testimony of Leon A. Beeghley before the master where some such statement was made. While this may have been the intent of Cold Metal, there is no evidence that United intended any such partnership arrangement. The circumstances leading up to the making of the 1927 contract are discussed in Section IV of this report and also in 102 F. 2d 27; hence, need not be repeated here.

Counsel for Cold Metal cites *Reizenstein v. Coopman*, 178 Fed. 546 (CCA 2) (1910) as an illustration of the rule of strict accountability on the part of a licensee. In the opinion of the master the facts in the *Reizenstein* case are so different from those in the case at bar that he cannot find in that case, or any other case cited, any persuasive reason for inferring that under the 1927 contract the intention of the parties was that United was to pay royalties on mills made and sold for use abroad under circumstances which would not have rendered a non-licensee liable as an infringer.

When a licensee is sued for royalties and the question is whether the product of the licensee comes under the claims of the patent involved, the test of liability is whether the licensee would be an infringer under the rules of patent law if he held no license. *Hewitt v. American Telephone & Telegraph Company*, 272 Fed. 194, 196;

affirmed 272 Fed. 392 (CCA 2). When the question is whether a licensee has, within the meaning of patent law, made or sold within the United States a product embodying the structural combination of the patent involved in the license, we see no reason why the same test should not be applied.

Several times in the brief and reply brief of Cold Metal counsel urges that it was by reason of holding the 1927 license contract United was enabled to obtain a large volume of profitable foreign mill business, hence United should equitably be required to pay royalties on such mills. The license agreement granted rights. It did not impose restrictions which would put the licensee at a disadvantage with non-licensed mill manufacturers competing for foreign business. Cf. *Hare v. Woodridge*, 94 Mass. 18 (1866) in which, though a quite different set of facts was involved, the applicable principle was concisely stated at page 26:

> "The object of the defendants' license was to enable them to do what they could not do without it; not to subject them to liabilities, by virtue of having taken a license, for doing what any person who had no license whatever would have a perfect right to do, assuming the plaintiffs' patent to be valid."

The master holds that the liability of United with respect to the mills sold to foreign purchasers should be determined in accordance with the rules of patent law which would be applied in determining whether a non-licensee was an infringer if he acted in all respects as United did.

It remains to be determined whether under the facts United did make or sell the foreign mills in the United States within the meaning of patent law.

CONSTRUCTION OF THE CLAIMS OF PATENT 195

The parties are not in accord as to the construction of the claims of patent 195. United argues that the invention claimed in this patent "consists of a 4-high mill with specific parts arranged and combined in a defined cooperative relation, to form a mill operative for rolling thin flat material. The patent does not claim or grant any exclusive right covering any individual part of the mill or all of the individual parts when not combined to form the patented mill." (United brief, page 4).

On the other hand Cold Metal contends that the proper construction of the claims is that the patent is not for a complete operative mill; that while the patent "relates" to a rolling mill, "the invention, as defined in claim 14, is merely the combination of certain appropriately proportional parts of a mill; namely two working rolls, backing rolls of larger diameter with necks having certain characteristics and antifriction bearings." (Cold Metal reply brief, page 7).

The master is of the opinion and so holds that Cold Metal's construction of the claims is the correct one, viz., that the claims of the patent are not for a complete operative mill but for the structural combination of working and backing rolls with bearings. This construction is supported by *In re Joseph Dawe,* (C.C.P.A.) 58 F. 2d 543; *In re Beplate et al.,* (C.C.P.A.) 77 F. 2d 506; *Ex Parte Alfred W. Abrahamsen,* (CCPA) 56 F. 2d 871; *In re Dense,* (C.C.P.A.) 156 F. 2d 76. The construction the court put upon the claims of the patent involved in *K. W. Ignition Company, et al. v. Temco Electric Motor Company,* 283 F. 873 (the shock absorber case), also supports the master's holding.

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CONSTRUCTION OF THE SALE CONTRACTS

Cold Metal contends that the proper construction of the sale contracts between United and the foreign purchasers is that United sold "a complete mill" in each instance (Cold Metal reply brief, page 4). United contends that it sold "the parts for making a mill" (United brief, page 25). Counsel for the parties seem to consider this distinction to be of importance. It does not appear to be so to the master.

It is not clear to the master just what counsel mean by the phrase "a complete mill" used in this connection. Since the master has adopted the construction of the claims of Patent 195 as urged by Cold Metal, the question, if material to the issue, would seem to be whether United contracted to furnish the complete patented structural combination or to furnish the parts therefor. To attempt to give a categorical affirmance or denial of either of the conflicting views would seem to the master to be largely an academic exercise in semantics and the answer evolved would not aid in determining whether United is liable for royalties on the foreign mills.

The sale contracts vary as to form, substance and phraseology. Some are lengthy detailed agreements, some are in the form of orders and letters. Many of the contracts provided that some of the parts or equipment necessary for a complete mill ready for operation were to be supplied by the purchaser, not by United. But in all instances, except mill no. 116, all of the parts or elements of the structural combination of patent 195 were to be supplied by United.

In the opinion of the master the essential facts with which we are directly concerned are that the contracts

did provide that United was to furnish all of the elements of the structural combination of patent 195 with the clear intent and understanding that they were to be assembled abroad in the plants of the purchasers; that with respect to some mills all of these elements were manufactured by or for United in the United States and were delivered to the purchasers in the United States without having been assembled; that with respect to other mills only some of the elements of the patented combination were manufactured by or for United in the United States and delivered to the purchaser in the United States without having been assembled, other parts of the combination having been manufactured for United abroad and shipped direct from the place of manufacture to the foreign purchaser. These facts appear to the master to be sufficient to determine whether, under the doctrines of patent law, United is liable for royalties on the foreign mills under the 1927 contract without determining whether these facts should be described as a sale of a complete mill or a sale of parts.

CLASSIFICATION OF FOREIGN MILLS

Under the stipulated facts the 31 foreign mills in dispute fall into two groups. The one group includes 17 mills (hereinafter designated by number) for which the bearings for the backing rolls of the structural combination were made for United in Sweden and shipped direct from Sweden to the foreign purchasers, all other parts of the mills, including the working and backing rolls of the structural combination of patent 195, having been made by or for United in the United States.

The other group of 14 mills (hereinafter designated by number) includes those, all the parts for which, in-

cluding the parts comprising the structural combination claimed in patent 195, were made by or for United in the United States, except as to mills nos. 104 and 123, in which the bearings for the *work rolls* were made in Sweden and were shipped direct to Japan.

RE FIRST GROUP, NOS. 89a, 89b, 90, 91, 92, 93, 116, 118, 119, 120, 122, 130, 135, 136, 141, 143, 194

This group of 17 mills includes those for which the bearings for the backing rolls were made in Sweden and shipped direct from Sweden to the foreign purchasers, all other parts having been manufactured by or for United in the United States.

The *contracts* for all of these mills were executed in the United States except with respect to the six mills, Nos. 89a to 93 inclusive, which were purchased by Thomas & Co. of Ebbw Vale, Wales. The contracts for these six mills were signed by the purchaser in England and by United in the United States. The word "executed" above is used as indicating the signing of the contracts, not their performance.

All of the *contracts* provided for delivery to the purchaser or its representative in the United States F.A.S. at the designated port except with respect to the six mills sold to Thomas & Co. in Wales, which contracts provided for delivery in Wales. However, the data on Exhibit A of Exhibit PM-7 shows that the parts for these mills which were made in the United States were actually delivered to the purchaser F.A.S. Philadelphia.

All of the parts for an operative mill, including the working rolls and backing rolls of the structural combination of patent 195, but not the bearings for the backing

rolls, were manufactured by or for United in the United States.

The various parts of the mills of this group which were manufactured by United, were made in the various plants of United, and after being boxed for export shipment were shipped F.A.S. to the port of embarkation where they were delivered to the purchaser or its representative. Likewise the parts manufacturd by United's subcontractors in the United States were boxed, shipped and delivered in the same manner.

According to the data on Exhibit A of Exhibit PM-7, in no instance were the working rolls, the backing rolls and the bearings of the patented structural combination for any one mill made in the same plant; nor were all the other parts necessary to form an operative mill made in the same plant.

United received payment for all the mills in this group in the United States.

The master is of the opinion and so holds that United is not liable for royalties on this group of 17 mills because *all* of the elements comprising the structural combination of patent 195 were not made by or for United in the United States and were never in the United States or its territories. The master does not consider such circumstances to be the sole criteria for determining liability with respect to mills sold to foreign customers but deems them to be essential to establish liability. The master relies on *Computing Scale Company v. Toledo Computing Scale Company*, 279 F. 648 (CCA 7) (1921) as his authority for this ruling.

In the *Scale Company* case the defendant had a factory in Toledo, Ohio, and also one in Canada. Salesmen

of the defendant took orders for scales in Canada and they were forwarded to the Toledo office for acceptance. Some of the parts of the structural combination of the patent involved were made in Toledo and shipped to Canada where other parts made in Canada were assembled into the completed scales. On an accounting for infringement of the patent it was held that defendant was not liable for profits or damages on the scales sold to Canadian users. At page 678 the court said:

"Defendant made profits on sales of cylinder scales in Canada. But no completed cylinder scale nor completed cylinder was ever shipped to Canada. Some parts were manufactured in Canada, and some were made here and shipped there; but the parts were there assembled into completed scales and there delivered to Canadian users.

"Because some of the parts were made in this country, complainant insists that defendant is to be held here as a contributory infringing maker. But contributory infringement can only arise in this country when somewhere and somehow in this country there is a completed infringement to which a contribution can be made. Bullock Electric Co. v. Westinghouse Co., 129 Fed. 105, 63 C.C.A. 607.

"An additional urge is that defendant is liable as an infringing seller in this country because Canadian salesmen sent the orders of prospective Canadian users of the Canadian scales to defendant's office in Toledo for approval, and such orders were not filled from the Canadian plant until so approved. Complainant is doubtlessly right in saying that the contract was executed (but not in the sense of performed) in this country. It seems to us that complainant is confusing a sale with an executory contract for a sale. If complainant's position is correct, then a Canadian manufacturer, who made his goods only in Canada, and parted with them only to Canadian users, would infringe a United States patent, if he should meet here a prospective Canadian user,

and should enter into an executory contract to be performed in Canada."

The facts in the case at bar differ somewhat from the facts in the *Scale Company* case but not in any important respect. In the Scale case the parts made in the United States were delivered to the purchaser in Canada after assembly with other parts made in Canada. In the case at bar the parts made in the United States were delivered to the purchaser in this country. In the opinion of the master this is not a controlling factor because a non-licensee selling and delivering in the United States only part of the structural combination would be neither a direct nor a contributory infringer. *Cimiotti Unhairing Co. v. American Fur Ref. Co.*, 198 U. S. 399; 25 S.Ct. 697, 702.

Also in the *Scale* case the *sale contract* provided for delivery in Canada whereas in the case at bar the *contracts* provided for delivery in the United States of the completed mills, including all of the structural combination of patent 195 except with respect to six mills sold to Thomas & Co., the contracts for which provided for delivery in Wales. Since actually only the parts made in the United States were delivered in this country and the remaining parts were delivered abroad, the contract provisions with respect to delivery need not be reckoned with in connection with this group of mills. A patent is not infringed by the making of a contract which, if performed as made, would constitute infringement, but actually is not performed so as to constitute infringement. *Van Kannell Revolving Door Company v. Revolving Door and Fixture Company*, 293 Fed. 261 (DC NY 1920); *Luten v. Town of Lee*, 206 Fed. 904 (DC Mass.) (1913).

In the *Scale Company* case it does not appear whether payment for the scales was made in the United States or in Canada. In the case at bar payment for the entire mill, including all the parts of the structural combination of patent 195, was made in the United States. No cases indicate that the place of payment is a controlling factor.

RE SECOND GROUP NOS. 69, 70, 71, 104, 108, 109, 121, 123, 146, 167, 168, 169, 180, 181

This group includes twelve mills for which all the parts of an operative mill, including the structural combination of patent 195, were manufactured in the United States by or for United. It also includes two mills, Nos. 104 and 123, for which all the parts of the structural combination of patent 195 were manufactured by or for United in the United States, and also all the other parts of the mills except the bearings for the work rolls which were manufactured in Sweden and shipped direct to the purchaser in Japan. The master understands that bearings for the work rolls are not included in the structural combination claimed under patent 195.

The *contracts* for all these mills were executed in the United States; and all of the *contracts* provided for delivery to the purchaser or its representative in the United States F.A.S. at the designated port.

After being boxed for export shipment all of the parts, except those above noted on mills Nos. 104 and 123, were shipped F.A.S. to the point of embarkation where they were delivered to the purchaser or its representative.

According to the data on Exhibit A of Exhibit PM-7, in no instance were all the parts for any one mill, nor

all the parts of any one structural combination of patent 195, made in the same plant.

United received payment for all the mills in this group in the United States.

Cold Metal contends that with respect to this group of 14 mills, United is liable to pay the royalty rate determined to be payable under the 1927 contract because United made and sold in the United States the complete combination of structural elements covered by the claims of patent 195, the delivery to the purchaser being made in the United States.

On the other hand, United contends that while it made and sold the parts for the structural combination and delivered them to the purchaser in the United States, the structural combination, not having been assembled, did not exist in the United States, and hence there was neither making nor selling within the meaning of the patent law.

It is conceded by both parties that an infringement arises either by making or selling or using. Robinson on Patents, Vol. III, Section 897. It is also conceded that United did not use the mills, so use is not involved.

The individual mill elements (rolls, bearings, housings, etc.) were old and well-known long prior to the issuance of patent 195. All of these elements could be bought separately in the open market from any one of the many mill builders and bearing makers in the United States both before and after patent 195 was granted.

Accordingly without any license, United or any other manufacturer had the right to make and sell separately the individual mill elements. However, if a manufac-

turer made and sold to a customer all the parts comprising the structural combination of patent 195 with the intent that they would be assembled and used as claimed in patent 195, the maker and seller would be liable as a contributory infringer if the purchaser assembled the parts comprising the structural combination and sold or used it in the United States. *Woodward v. Hurd*, 232 U.S. 428, 34 S.Ct. 409. However, Cold Metal does not base its claim for royalties on the theory of contributory infringement, but on the ground that under the facts United would have been liable as a direct infringer if it had not had license rights.

Testing the liability of United with respect to this group of 14 mills by the rules of patent law applicable to infringement, the question to be decided is whether a non-licensee would be liable as a direct infringer if he had made, sold and delivered to a purchaser in the United States all the unassembled parts of the structural combination claimed in patent 195 with the intent and understanding that the parts would be assembled and used only outside the United States and its territories, and were actually so assembled and used.

Counsel for Cold Metal relies on the following statements in Robinson on Patents:

> Vol. III, Sec. 903. "The act of making is complete when the article exists in a condition fit for use, though still in parts which are to be united by the user. * * * To make for practical use or for sale is an infringement although the article be never used or sold, or be sold or used outside the territorial limits within which it is protected by the patent."
>
> Vol. III, Sec. 905. "To sell a patented article without authority from the patentee is always an infringement."

Vol. III, Sec. 924. "A combination is complete when all its elements, with their connecting parts, are finished ready to be united."

Vol. III, Sec. 1252. "Every voluntary act of the licensee which places the article beyond his own control has the legal effect of a sale, and is sufficient to create a liability for royalties. * * * This liability he cannot avoid by varying the form or name of the article while its substantial attributes remain, nor by disposing of it in an incomplete condition to another licensee * * *."

If the foregoing statements are to be accepted as authoritative they would seem to be controlling, but United challenges on various grounds the soundness of Professor Robinson's statements concerning sales of unassembled parts of a patent involving a structural combination. It is pointed out that the Robinson text was published in 1890 and that since that time the earlier doctrines of patent law have been modified by court decisions. United also maintains that the Robinson text does not cite authorities to support the quoted statements and also that on reading of the context the scope of the statements relied on by Cold Metal are somewhat restricted.

Counsel for United argue that when Robinson discusses the sale of parts of a patented structural combination he has in mind situations which are now classified as contributory infringement, where intent is a controlling factor. They further point out that when Robinson published his text the term "contributory infringement" was not used, but was developed later in case law. As stated above, Cold Metal contends that United with respect to this group of 14 mills is a direct infringer and not a contributory infringer.

The master does not consider the statements from Robinson on Patents, quoted *supra*, to be authoritative in the light of later developments in case law. In cases where the courts have dealt with export sales the application of the broad and simple rules of Robinson would have afforded a ready solution; but instead of relying on them the courts have wrestled with the problem as one to be solved in the light of the principles and analogies of other cases and the detailed factual situation involved. Nor have counsel been able to cite the texts of more recent writers as supporting Robinson's views.

Cold Metal relies on *K. W. Ignition Company, et al. v. Temco Electric Motor Company*, 283 F. 873 (C.C.A. 6) (1922). This was a suit for infringement of a patent relating to shock absorbers for Ford automobiles. One of the questions involved was whether the defendant was liable for absorbers manufactured by it in the United States but sold for use abroad.

The objection to the inclusion of foreign sales was based on the proposition that the absorbers as manufactured and as sold embodied less than all the elements of the patented combination. While each claim of the patent stated a combination in automobile construction or in an automobile, the court held that it was only in a highly technical sense that the patent could be regarded as upon an automobile. The court said, page 880, "Although stated to be for an improvement in automobiles, it is wholly confined to the shock absorber device." The absorbers manufactured and sold by the defendant were fully assembled and ready for use by attachement to a Ford automobile.

The court held that the defendant was liable for sets of absorbers sold abroad, stating at page 879:

"A majority of this court is of opinion that this royalty should be awarded not only upon the 59,248 sets of absorbers sold by the defendant in the United States, but also upon the 7,373½ sets sold for use abroad. If the completed shock absorbers so sold embodied plaintiff's entire invention under the patent, defendants would be equally liable whether the absorbers were sold abroad or here, they having been manufactured in the United States. Deering Co. v. Minnesota Co., 235 U. S. 650, 35 Sup. Ct. 221, 59 L.Ed. 398 and cases cited; Bullock Co. v. Westinghouse Co. (C.C.A. 6) 123 Fed. 105, 109, 63 C.C.A. 607."

Counsel for Cold Metal seems to interpret the *Temco* case to be a sale of unassembled parts because the claims of the patent referred to a specified combination "in automobile construction." But as the master reads the opinion in this case, the court held the shock absorber alone to be the patented combination and since it was made and assembled in the United States, though sold with the intent that it should be used abroad, the defendant was held liable as an infringer. This is the construction put on the *Temco* case in *Radio Corp. of America v. Andrea*, 79 F. 2, 626, 628.

In the *Temco* case the view of the appellate court appears to be that if an automobile spring or some other part of an automobile was an element of the patented structural combination, the defendant would not have been held to be an infringer as to the shock absorbers sold abroad because all the parts of the combination were not assembled in the United States. In the *Temco* case it does not appear where the export sale contracts were executed or where delivery was made to the purchasers.

Cold Metal also relies on *Dowagiac Manufacturing Company v. Minnesota M. Plow Company*, 235 U. S. 641, 35 S. Ct. 221 (1915). This was a suit for infringement of a patent relating to an improvement in grain drills. The defendant did not manufacture the drills but purchased them from the manufacturer completely assembled and resold them. One of the questions involved was whether the defendant was liable in damages for drills which were sold in Canada. At pg. 225 the court said:

> "There are still other grounds upon which damages may be asserted in infringement cases, as where hurtful competition is shown, but the present record does not require that they be specially noticed.
>
> "Some of the drills, about 261, sold by the defendants, were sold in Canada, no part of the transaction occurring within the United States, and as to them there could be no recovery of either profits or damages. The right conferred by a patent under our law is confined to the United States and its territories (Rev. Stat. Sec. 4884, Comp. Stat. 1913, Sec. 9428), and infringement of this right cannot be predicated of acts wholly done in a foreign country. See United Dictionary Co. v. G. & C. Merriam Co., 208 U.S. 260, 265, 52 L.ed. 478, 480, 28 Sup. Ct. Rep. 290. The case of Gould's Mfg. Co. v. Cowing, 105 U.S. 253, 26 L.ed. 987, is cited as holding otherwise, but is not in point. There the defendant made the infringement articles in the United States. Here, while they were made in the United States, they were not made by the defendants. The latter's infringement consisted only in selling the drills after they passed out of the makers' hands. The place of sale is therefore of controlling importance here."

There is no detailed explanation of the statement "no part of the transaction occurring within the United States". An examination of the opinion of the Circuit Court of Appeals and that of the District Court, both

of which are reported in 183 Fed. 314, does not furnish any information. Apparently the defendants must have had their place of business within the United States but it does not appear whether the defendant had possession of the drills in this country. Nor is there information as to where the sale contracts were executed, nor where delivery was made to the purchasers. The fair inference would seem to be that delivery at least was made in Canada.

The *Dowagiac* case presents a set of facts differing essentially from the case at bar. In the *Dowagiac* case the defendant did not manufacture the drills, but purchased them from the manufacturer completely assembled, hence defendant could not be charged with liability for making. Apparently the defendant did not deliver the drills in the United States, hence he was not an infringing seller. Applying literally the above quotation with regard to sales from Robinson on Patents, Vol. III, Sec. 905, it would seem that the sale in the *Dowagiac* case would be an infringement, but the court did not so hold.

Counsel for Cold Metal cites *McDaniel, et al. v. Franklin Railway Supply Company*, 174 Atlantic 375, in the Court of Chancery of Delaware, 1934. This case was a bill for an accounting for royalties under a license contract. The plaintiff granted to the defendant a license to make and sell a patented improvement for axle boxes on locomotives known as an automatic adjustable wedge. The license agreement provided that the licensee was to pay royalties on each wedge made and sold in its entirety, the licensee having the right to make and sell parts for repairs without payment of royalties.

The plaintiff contended that the defendant was selling the entire device under the guise of sales of separate parts. The sales of the separate parts were to domestic purchasers for use within the United States. The court held that if the defendant was evading the license agreement it would be liable to pay royalties, but the court differed with the master's method of determining which sales of parts were really sales of the entire device.

While this case involves sales of unassembled parts, since the sales were made for use by the purchaser in the United States, it does not meet the problem involved in the case at bar. The McDaniel case may be considered as an attempted fraudulent evasion of the license contract or, applying the infringement test, the defendant would be a contributory infringer if it was shown that the sales were made with the intent that they were to be assembled to make a completed wedge rather than to use them for repairs.

Both parties rely on *Radio Corporation of America, et al.*, involving sales for export by a non-licensee. This case was twice before the Court of Appeals for the Second Circuit. Because this case is more nearly in point than any other cited by counsel the master deems it appropriate to deal with it in extenso.

Radio Corporation of America, et al. v. Andrea, et al., 79 F. 2d 628 (C.C.A. 2) (1935), was an infringement suit and the appeal was from a decree of the District Court granting a preliminary injunction on bill, answer and affidavits. The patents in suit related to radio receiving sets, the patented combination consisting of a receiving apparatus and vacuum tubes. The defendant manufactured the receiving apparatus but purchased

the tubes in the open market from another manufacturer. The defendant sold the apparatus solely for export and the contention was that when sold and shipped the patented combination was incomplete by reason of the fact that the vacuum tubes were not inserted in the sockets provided for them, the tubes being separately packaged but placed within the same carton as the receiver. The opinion stated, page 627, "Although the sales are completed within this country, the receivers are to be used only outside the United States territory." On the foregoing statement of facts the appellate court held that the preliminary injunction was improvidently granted. At page 628 the court said:

> "Under the facts at bar, however, we cannot say that the patented combination was complete until physical connection is established between the terminals of the circuits and the electrodes of the tube, for such relationship is the essence of the patent.
>
> "Nor is this conclusion so highly technical as it may at first blush appear. No wrong is done the patentee until the combination is formed. His monopoly does not cover the manufacture or sale of separate elements capable of being, but never actually, associated to form the invention. Only when such association is made is there a direct infringement of his monopoly, and not even then if it is done outside the territory for which the monopoly was granted. This is the basis for the doctrine of contributory infringement, which permits the elements of a patented combination to be sold in this country with the intent that the purchaser shall make and use the invention abroad. (Citing cases) Not disputing this principle of law when only part of the elements of a patented combination are involved in the sale, the plaintiffs apparently contend that it is inapplicable when all the elements are sold together, though disassembled and intended to be put into operable relationship only abroad. No authority

has been cited which puts any such limitation upon the doctrine of contributory infringement; and on principle none such is justifiable. By their sales for export the defendants were guilty of neither direct nor contributory infringement."

In the District Court the plaintiffs also contended that the defendants committed a direct infringement by assembling and using the tubes and receivers in factory tests before shipment. The evidence as to such testing was not fully developed and the appellate court pointed out, page 629, that the District Judge had made no express finding that the test was of such a nature as to constitute an infringement; nor was it clearly indicated in his opinion that the District Judge would have granted a preliminary injunction if the evidence as to the tests were the only proof of infringement. The appellate court further stated that the injunction was granted on the basis that the defendants were manufacturing and selling a complete combination which was an infringement even though the tubes were not inserted in the sockets of the receivers at the time of sale, and with that conclusion the appellate court could not agree.

The *Andrea* case came on for final hearing in the District Court and the decision is reported in 15 F. Supp. 685. It was stipulated that the defendants had assembled the receivers and the tubes in their factory for testing; that in the course of such tests each receiver was used as a complete instrument and in the manner in which it was to be used by the ultimate purchaser, although the source of the signals for the tests were oscillations locally generated in the defendant's plant rather than radio broadcast programs.

On final hearing the District Court considered two questions: first, whether the factory test was an in-

fringing use, and second, whether the defendants had acquired an implied license to use the tubes in the combination. The District Court held that there was an infringing use, pointing out that the use was not in the course of scientific research but was one of the steps which the defendants deemed necessary in the manufacture and sale of their product. In support of the ruling that under the facts there was an infringing use, the District Court cited Robinson on Patents, Sections 898, 903 and 904 without quotations therefrom.

With respect to the implied license, the District Court held that there was a license to use the tubes during part of the period involved but not for the other part.

In the opinion of the master it is clear that the decision of the District Court was that the defendant's liability as an infringer was based on making and using the patented combination by assembly and testing, and not on the *sale* of the unassembled parts. The District Court accepted the ruling of the appellate court reported in 79 F. 2d 626 that the sale of the unassembled parts was itself not an infringement. The case as reported in 15 F. Supp. 685 does not show what decree was entered, the direction being that plaintiff should have a decree in accordance with the opinion.

In the *Andrea* case both parties appealed from the second decision of the District Court and the second appeal is reported 90 F. 2d 612. The report of the case opens with the statement, "From a decree for defendant as to sales made by them and for infringement in the use of patents all parties appeal." The appellate court held the defendant had infringed and had no implied license to use the purchased tubes at any time. The closing statement of the opinion is "Decree modified."

On its facts the *Andreu* case is more nearly in point than any other cited by counsel and it will be persuasive authority to rule the case at bar with respect to this group of 14 mills if the ground on which the appellate court's ruling is based can be clearly determined. Counsel for United contends that on the second appeal the decision that there was infringement was predicated mainly on the making and using of the assembled combination for testing in the defendant's factory rather than on the sale of the unassembled parts, though conceding that the court held there was infringement by the sale by reason of the special facts. On the other hand, counsel for Cold Metal contends that the ruling was that not only was there infringement as to making and using, but also a ruling of equal weight that there was infringement by sale of the unassembled parts, thereby repudiating what was said about a sale of unassembled parts in the opinion on the first appeal.

With respect to the *sale* of the unassembled parts, the majority said at page 613:

> "At this trial it was admitted by the defendants that the tubes were inserted in the sockets and therefore connected with the circuits while in the defendants' plant and the entire combination was completed and used in testing the receivers. Thereafter, the tube was removed from its socket; then the receiver and the tube (or a duplicate and other tubes used in the receiver for different purposes) were packed in the receiver cabinet and thus sold. The tubes were placed in a separate carton and this, with the receiver, was placed in a larger carton. The purchaser to connect the tube needs only insert it in the socket. No adjustment is required; no screw or nut need be tightened. Where the elements of an invention are thus sold in substantially unified and combined form, infringement may not be avoided by a separation or division of parts which

leaves to the purchaser a simple task of integration. Otherwise a patentee would be denied adequate protection. Cf. Eibel Process Co. v. Minnesota Paper Co., 261 U. S. 45, 63, 43 S. Ct. 322, 328, 67 L.Ed. 523."

Again at page 614, after discussing the statements in the opinion on the first appeal the court said:

"On this record it appears that the receiver and tubes were assembled completely and tests of operation were made after which the tubes were taken out, packed in separate cartons but within the same larger carton as the receiver. The sales for the completed receiving sets were made within the territorial limits of the United States and shipped in export. The single package contained all the elements of the combination."

Again at page 614 the court said:

"Defendants may not be relieved of infringement merely because the tube electrodes are physically disconnected from the circuits at the moment of sale. Cf. Spirella Co. v. Nubone Corset Co., 180 F. 470, 473 (C.C.Pa.); Strobridge v. Lindsay, Sterritt & Co., 6 F. 510 (C.C.Pa.). We hold, therefore, that on this record there is infringement by the sale of the combination as described."

With respect to the *use* of the assembled parts by the defendant before the sale, the majority said at page 614:

"The testing process was held below to be an infringing use from the time certain noninfringing uses were developed. The testing was a commercial use of the completed combination of the patents 'just as it is to be used by the ultimate purchasers,' even though the receiving waves and musical tone were generated in a laboratory rather than at a distant transmitting station. It is enough that it was necessary to assemble the tubes and the receiver and to use them as a complete combination of the patent in suit. The tests were made to see if they

were marketable — a commercial and hence an infringing use. Cimiotte Unhairing Co. v. Derboklow, 87 F. 997 (C.C.N.Y.)"

In the opinion of the master it seems clear that on the first appeal in the *Andrea* case the appellate court broadly held that there was no infringement by a sale for export of the unassembled parts of a patented combination, and that ruling was made in the light of the facts that all the parts of the combination were shipped in the same package and to complete the combination there remained for the purchaser only to insert the tubes in the sockets. On the second appeal undoubtedly the appellate court retreated from the position taken on the first appeal, but the vital question is, how far did the court retreat? There is nothing on the second appeal in the *Andrea* case which indicates that the court entertained the view that *any* sale for export of all the unassembled parts of a patented combination would constitute an infringement, even though all the parts existed in a condition fit for use in accordance with the view expressed by Robinson on Patents, Vol. III, Section 903, *supra*.

In the opinion of the master, on the second appeal in the *Andrea* case the court was limiting its holding that there was an infringement by the *sale* to the particular facts involved. Thus the court said, page 613: "The purchaser to connect the tube need only to insert it in the socket. No adjustment is required; no screw or nut need be tightened." Again at page 613 the court said "where the elements of an invention are thus sold in substantially unified and combined form" etc. Again at page 614: "Defendants may not be relieved of infringement merely because the tube electrodes are phys-

ically disconnected from the circuits at the moment of sale. * * * We held, therefore, that *on this record* there is infringement by the sale of the combination as described."

Comparing the facts in the *Andrea* case with those in the case at bar, in the latter a substantial construction project is involved to assemble the patented combination and integrate it with the other parts of the mill in order to obtain the use of the combination. Adopting the language of the *Andrea* opinion, many screws and nuts would have to be tightened to assemble the patented combination. In the case at bar the parts were not sold in substantially unified and combined form but were boxed separately and were shipped separately from the various plants in which they were manufactured. In the case at bar, the parts never having been assembled, of course were not later disconnected.

On the second appeal in the Andrea case Judge Swan dissented and his brief opinion was as follows:

> "In holding that the sale in this country of the disassembled parts of the invention for assembly and use abroad is a direct infringement, I think we overrule our prior decision in Radio Corporation v. Andrea, 79 F. (2d) 626. Unless and until that opinion shall be declared wrong by the Supreme Court, I should prefer to abide by it. In other respects I agree with the present opinion."

Counsel for Cold Metal argues that the opinion of Judge Swan indicates that he construed the majority opinion to be a broad ruling that any *sale* for export of unassembled parts constituted an infringement. The master takes the dissenting Judge's view to be that, notwithstanding the peculiar circumstances on which the majority relied to find infringement by sale, the

defendant should not be held liable as a selling infringer because as Judge Swan stated in his opinion on the first appeal, the patented combination when sold and delivered was not complete and there could be no infringement unless the physical connection of the tubes was established at the time of sale.

That the defendant in the *Andrea* case had completely assembled and tested the sets, though disconnecting the tubes before sale, was the factor which constituted infringement by making and using, but it was also one of the factors which the court took into consideration in holding that there was an infringing sale.

We interpret the majority opinion in the second *Andrea* appeal to be that the general rule is that neither the making nor selling in the United States by a nonlicensee of the unassembled separate parts of a patented combination for use and assembly abroad constitutes a direct infringement, though the peculiar facts in a given case may call for a departure from the general rule. In the *Andrea* case the peculiar facts justifying the departure from the general rule were that the parts had been assembled, then disconnected for shipment, and that because the parts were shipped in the same carton and the assembly of them merely involved the insertion of tubes in their sockets there was substantial unification and combination at the time of sale.

Certainly such special facts as were relied on in the *Andrea* case are not present in the case at bar. United did not assemble the parts then disconnect them. The separately boxed parts for the patented structural combination of each mill may have been at the same port at the same time and may have been loaded on the same

vessel, or on the same train in the case of mills nos. 180 and 181; but it would require considerable imagination to class these circumstances to be a substantial unification and combination of the parts.

Maintaining that the *Andrea* case does not establish such a general rule as the master deduces therefrom, counsel for Cold Metal argues that there are such special facts in the case at bar as would justify departure from the general rule if such rule there be.

Counsel for Cold Metal points out that we are not here dealing with small over-the-counter articles but with mills of large size which are built to engineering specification on customers orders and which are never assembled until they are put together on specially built foundations in the plants of the purchasers. They point out this obtains when the mills are sold for domestic use as well as when they are sold for foreign use, and that because of transportation difficulties it would not be feasible for United to assemble the patented combination and ship it assembled in either situation. This is doubtless the fact and counsel for Cold Metal argues that since nonassembly of the parts is a circumstance over which United has no control, the fact that the parts sold for use abroad were not assembled and practically could not be assembled, is a point which must be reckoned with. To exempt United from liability on sales of unassembled parts for export when United admits liability on domestic sales of unassembled parts, counsel argues would be illogical and inequitable.

With respect to domestic sales the fact that it is practically impossible for United to assemble the elements of the structural combination before shipment is

not a circumstance which plays any part in determining United's liability for royalties or that needs to be reckoned with to afford Cold Metal full protection of its patent.

In the case of a domestic sale when United contracts to make the parts comprising the structural combination and to assemble the parts in the plant of the purchaser, and does so assemble them, United, if it held no license, would be a direct infringer both on the ground of making and selling. But if United manufactured and sold all the parts of the structural combination to be assembled by the purchaser in the latter's plant, United, if it held no license, would be a contributory infringer.

If impossibility of assembly prior to shipment is not a circumstance which effects or controls liability on domestic sales, we are unable to see why it should become a controlling factor on export sales; especially so when the patent statutes do not purport to give the same protection to the patentee-licensor on export sales that they do on domestic sales.

In the case of sales for export when the mills are to be assembled and used only abroad, United, if it held no license, would not be a contributory infringer because there is no direct infringement to which United could be a contributor. Under the doctrine of the *Andrea* case if the parts are not at least substantially assembled at or before sale there is no direct infringement.

The master is of the opinion and so holds that United is not liable for royalties on this second group of 14 mills because if United held no license, it would not be liable as an infringer with respect to these mills.

As to mill No. 116 sold to a British purchaser, Cold Metal concedes that United is not liable. All of the bearings were supplied by the purchaser.

SECTION VIII.

Discussion of the Defense That Receipt of Payments by Cold Metal from Purchasers of United Mills Discharged United of Liability for Royalty on Such Mills.

The findings of fact with respect to this defense are numbers 83 to 94, inclusive. The conclusion is No. 17.

Five of the mills in this category were manufactured and sold by United prior to October 21, 1930, viz., mills Nos. 6a, 6b, 7, 8 and 9 sold to Weirton Steel Company. The status of these 5 mills is considered in Section IX of this report.

There are also 9 mills sold by United which were involved in infringement suits brought by Cold Metal against the purchasers. These suits were settled by the payment of a lump sum by the purchaser to Cold Metal. The mills involved are the five sold to Ford Motor Company, finding 92, the three sold to Acme Steel Company, finding 93, and the one sold to Thompson Wire Company, finding 94. In these instances, a sum of money was paid for a release of liability for past infringment. They do not involve license agreements for tonnage royalties. It appears, however, that the amount paid for a release in each instance exceeds the royalty the master has held to be payable by United to Cold Metal under the 1927 contract.

The remaining mills in this category are the 10 listed in finding 88. Under the license agreements listed

Supreme Court of the United States

No. 71-315 ---, October Term, 19

Deepsouth Packing Co., Inc.,

Petitioner,

v.

The Laitram Corporation

ORDER ALLOWING CERTIORARI. Filed January 17, 1972.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted limited to Question 1 presented by thepetition which reads as follows:

"1. Is an apparatus claim of a United States patent directed to a combination of elements, each of which is old, infringed under 35 U.S.C. § 271(a) when:

(a) although the individual elements are manufactured in the United States,

(b) the individual elements are never assembled in the United States, and

(c) the first and only assembly of the elemental parts into an operable combination or apparatus occurs, and all testing, adjustment, modification and use of the assembled apparatus is conducted in, a foreign country?"

Supreme Court, U.S.
FILED
MAR 1 1972
E. ROBERT SEAVER, CLERK

SUPPLEMENTAL
APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-315

DEEPSOUTH PACKING COMPANY, INC.,

Petitioner,

versus

THE LAITRAM CORPORATION,

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI
FILED: August 31, 1971

CERTIORARI GRANTED: January 17, 1972.

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N O T E:

PAGES 443, 444, 445, 446, 447 and 448 are photographs of pages 5, 8, 12, 13, 15, and 16 of Opinion of the District Court, dated, April 7, 1969; Rubin, J:.

N O T E:

Pages 443, 444, 445, 446, 447 and 448 are photographs of pages 5, 8, 12, 13, and 16 of Opinion of the District Court, dated April 7, 1969, Rubin, J.

The embodiment of this patent, as it is marketed by plaintiff, looks like this: